

STATE OF ALABAMA
ADVISORY COMMITTEE ON
CHILD SUPPORT GUIDELINES
AND ENFORCEMENT
MONTGOMERY, ALABAMA

IN RE: CHILD SUPPORT GUIDELINES
COMMITTEE MEETING
MARCH 31, 2006

* * * * *

Advisory Committee on Child Support
Guidelines and Enforcement meeting held on
Friday, March 31, 2006, commencing at
approximately 10:10 a.m. at the Alabama Judicial
Building, 300 Dexter Avenue, Montgomery, Alabama;
reported by Laura A. Head, Court Reporter and
Commissioner for the State of Alabama at Large.

* * * * *

1 ADVISORY COMMITTEE MEMBERS PRESENT:

2 Honorable Jack W. Hughes, Chairman
3 Presiding Circuit Judge
4 7th Judicial Circuit
5 Calhoun County Courthouse
6 25 West 11th Street
7 Anniston, AL 36201

8 Honorable Lyn Stuart
9 Associate Justice
10 Supreme Court of Alabama
11 300 Dexter Avenue
12 Montgomery, AL 36104

13 Honorable Terri Bozeman Lovell
14 District Judge
15 P. O. Box 455
16 Hayneville, AL 36040

17 Honorable Mary C. Moore
18 Perry County Circuit Clerk
19 Perry County Courthouse
20 P. O. Box 505
21 Marion, AL 36756-0505

22 Mr. Stephen R. Arnold, Esquire
23 Suite 600
2025 3rd Avenue N
Birmingham, AL 35203

Mr. Gordon F. Bailey, Jr., Esquire
Suite 230
1001 Noble Street
Anniston, AL 36201

Ms. Jennifer Bush, Esquire
Legal Division
Alabama Department of Human Resources
Gordon Persons Building
50 N. Ripley Street
Montgomery, AL 36130

1 Ms. Diana McCampbell
2 Alabama Department of Human Resources
3 Gordon Persons Building
4 50 N. Ripley Street
5 Montgomery, AL 36130

6 Professor Penny Davis
7 Associate Director
8 Alabama Law Institute
9 P. O. Box 861425
10 Tuscaloosa, AL 35486-0013

11 Dr. Benjamin W. Patterson
12 P. O. Box 138
13 Montgomery, AL 36101

14 Mr. J. Michael Manasco, Esquire
15 P. O. Box 302510
16 Montgomery, AL 36101-2510

17 Mr. Bryant A. Whitmire, Esquire
18 Suite 501
19 215 Richard Arrington, Jr., Blvd. N.
20 Birmingham, AL 35203

21 Ms. Julie A. Palmer, Esquire
22 2522 Valleydale Road, Suite 100
23 Birmingham, AL 35244-2701

Mr. L. Stephen Wright, Jr., Esquire
2125 Morris Avenue
Birmingham, AL 35203-4209

1 (Whereupon, the following was
2 had and done:)

3 JUDGE HUGHES: We will go ahead and
4 start our meeting of the Supreme Court's
5 Advisory Committee on Child Support and the
6 Reformation of our Child Support Guidelines.

7 For a little background information,
8 I'm Jack Hughes. I'm a Circuit Judge in
9 Calhoun County, and I'm the Chairman of the
10 Committee.

11 And at the last meeting that we had,
12 the Committee voted and recommended to the
13 Administrative Director of Courts, which he
14 forwarded on to the Supreme Court, to have an
15 independent study done of the report by PSI
16 and a comparison study of that and some of
17 the other methods of establishing child
18 support guidelines. And we have Mr. Mark
19 Rogers here with us today who submitted that
20 report. That's been sent out to all of the
21 Committee, and it's been put on AOC's
22 website. And we want to give him an
23 opportunity. We also have Dr. Venohr here

1 from PSI who will give a response in that and
2 then questions from the Committee.

3 For the audience here, we will not be
4 taking any input from you today. This is an
5 educational part for the Committee. We've
6 already had the public input into the child
7 support. We will not be taking a vote on
8 which method that we're going to recommend
9 today. This is going to be a lot of
10 information that's going to have to be
11 digested.

12 I will probably be trying to schedule
13 another meeting around the end of May, first
14 of June, somewhere in that area, at which
15 time the Committee will then make a vote on
16 the method of establishing our child support
17 guidelines that we will recommend to the
18 Director of Courts and to the Supreme Court
19 for that.

20 We also have some other issues that we
21 will be presenting, time permitting, this
22 afternoon. We had had the -- referred to a
23 subcommittee on the issue of how to address

1 the health insurance issue in there. They've
2 got something they're going to present.
3 We've got some other issues, as I said, time
4 permitting that we will be addressing.

5 We will ask the Committee -- I'm going
6 to ask the Committee to go around the table
7 and introduce themselves and as you have a
8 question so that the court reporter will be
9 able to get it properly. So, Gordon, if you
10 mess up, we want to know that it's you that
11 messed up.

12 MR. BAILEY: Thank you, Judge.

13 JUDGE HUGHES: So identify yourself
14 when you're asking a question and who it's
15 directed to.

16 So the pretty lady next to you, Gordon,
17 we'll start with her.

18 MS. PALMER: Thank you, Judge. My name
19 is Julie Palmer. I'm a private attorney
20 mainly in Shelby County, but I'm also the
21 Chairperson this year for the Family Law
22 Section of the Alabama State Bar.

23 MR. BAILEY: Gordon Bailey, Anniston,

1 Alabama. Recently retired attorney from
2 private practice.

3 MR. WHITMIRE: Drew Whitmire,
4 Birmingham attorney. I do a little probate
5 and domestic practice.

6 MR. ARNOLD: Steve Arnold, private
7 attorney in Domestic Relations law,
8 Birmingham, Alabama.

9 MR. MANASCO: Mike Manasco, formerly
10 private practitioner. Now General Counsel to
11 Treasurer Ivey.

12 MS. BUSH: Jennifer Bush, DHR Legal
13 Counsel.

14 MS. McCAMPBELL: Diana McCampbell,
15 Division Director for Child Support
16 Enforcement.

17 MR. WRIGHT: Steve Wright, private
18 practice attorney in Birmingham, Alabama,
19 Domestic Relations.

20 MS. DAVIS: Penny Davis with the
21 Alabama Law Institute.

22 DR. PATTERSON: Ben Patterson. I'm a
23 lobbyist with the firm of Fine Geddie &

1 Associates here in Montgomery.

2 JUDGE HUGHES: All right. With that,
3 we will turn it over to you, sir.

4 MR. ROGERS: Thank you, sir. Thank
5 you, Mr. Chair. It's a pleasure to be here.

6 First, I want to thank the Advisory
7 Panel for offering me the opportunity to do
8 this study. I think this is the first time
9 that I'm aware of where a panel has actually
10 chosen to get competing advice. And I think
11 if I had presented the first report, then it
12 would have been appropriate for the panel to
13 get a second opinion on my report. So this
14 is the kind of thing that happens in academia
15 everyday where you have peer review, and in
16 the end, the idea is to get closer to the
17 truth and end up with a better policy. And
18 it's been a learning experience for me, and I
19 look forward to hearing from Jane Venohr and
20 continuing the discussion.

21 At any time, feel free to ask
22 questions. I know there's a lot of technical
23 detail that I've tried to soften up a bit.

1 And being an economist, that's hard for me to
2 do even when I tried very hard to soften it a
3 bit. So feel free to ask questions.

4 JUDGE HUGHES: Mark, let me interrupt
5 just a minute. If you don't have a copy of
6 the packets that we will be reviewing, behind
7 this podium, on the other side of the podium
8 there, there are some extra copies if you
9 don't have one.

10 MR. ROGERS: Continuing ahead, I just
11 want to point out a little bit about who I am
12 and what my approach in this study is. I'm
13 an Economic Consultant. Been consulting on
14 child support issues for about five years.
15 Prior to that, I was an economist with the
16 Federal Reserve Bank of Atlanta. It was not
17 on child cost issues. It was on Federal
18 Reserve policy. And while at the bank, I was
19 appointed to the Georgia Commission on Child
20 Support and actually began studying these
21 issues from an economics perspective. I did
22 a little publishing, and attorneys started
23 asking me to testify in court. And so I

1 became more involved in the issue.

2 And I've seen this issue as a
3 noncustodial parent. Then I became a
4 custodial parent. I'm now a custodial
5 parent. I've remarried, and my wife receives
6 child support. So I've seen this issue from
7 essentially every possible personal angle and
8 basically realized it's a very important
9 issue that needs to be correct as close as
10 possible, whichever side of the fence you're
11 on.

12 And testifying in court frequently, I'm
13 instructed by attorneys on how my economic
14 testimony has to fit into legal principles.
15 And not every attorney would agree with it.
16 But what's been pounded into me by the
17 attorneys that I've worked with is child
18 support is a legal presumption. And when I
19 go into court, I have to treat it as a legal
20 presumption, have the economic exhibits
21 conform to principles for legal presumptions,
22 not a social policy.

23 So the study that I've done looks at

1 child support as a legal presumption, and
2 what's been pounded into my head by the
3 attorneys that I've worked with is there
4 should be no arbitrary features in a child
5 support guideline. It should have some
6 empirical basis. It should apply to the
7 facts of the case. That is, whatever the
8 presumption is based on should closely fit
9 the facts it's applied to. And we'll see
10 what I mean by that shortly. And those are
11 some of the key principles that form the
12 foundation of my study as well as when I go
13 into court to testify.

14 And one of the first issues in terms of
15 child support guidelines is what does the
16 cost schedule look like, what should it be
17 based upon, the basic child support
18 obligation schedule. And in Alabama and in
19 most states or actually all Income Shares
20 states except for one, the BCSO schedule is
21 based on intact family data. And I think
22 that's generally recognized. That data is
23 more readily available than single parent

1 data. That's definitely one of the factors
2 behind that.

3 But basically, from my perspective as
4 an economist, if you take intact family data,
5 what you're saying is both parents live in
6 the same house. They have available income
7 as if they live in the same house. And then
8 you base child support cost according to the
9 available income as if you live in one
10 house. That's what the presumption is based
11 on.

12 In reality, the child support
13 guidelines is never, to my knowledge, applied
14 to an intact family. So you have an
15 assumption or a set of underlying facts that
16 never fit the intended application. Now, it
17 wouldn't matter if it didn't make a
18 difference. But the difference that it does
19 make is, that when you go from one house to
20 two houses, you have two sets of rent or two
21 sets of mortgages plus two sets of
22 utilities. And that affects available
23 income.

1 Now, in terms of traditional child
2 support determination, if you're using intact
3 family data, you're actually not following
4 the traditional standard of needs and ability
5 to pay because you're assuming that there is
6 an ability to pay that simply is not there.
7 So there's something of a conflict between
8 intact family data and the actual ability to
9 pay that's applied in court. There is a
10 mismatch.

11 So basically, I look at this as an
12 issue. How do we convert the data or how do
13 we come up with data that fits the facts that
14 the two households -- there are now two
15 households, not one? The available income
16 for child support is based on the fact that
17 you've got to spend on two houses, two sets
18 of utilities.

19 And there are two different approaches
20 that I took. One, let's start with the
21 intact family data. We're comfortable with
22 that. And let's make adjustments to the
23 intact family data to reflect the fact that

1 there are two mortgage payments or two rent
2 payments and two utility payments. So let's
3 adjust that data.

4 The other approach is, let's take
5 single-parent data because now we have two
6 houses and, at least until someone remarries,
7 you've got a single parent in each
8 household. And you have a little bit
9 different outcome.

10 Now, use combined data for both. There
11 is a little misunderstanding on this average
12 income issue. For the single-parent
13 household estimation procedure, we're taking
14 combined income and looking at, what is the
15 highest sustainable standard of living in
16 both households, what's the highest standard
17 of living each parent could have when there
18 are two households. And the highest they can
19 both have is an average of combined income.
20 So we have an average income in one
21 household, and an average income in the other
22 household. So we still have the same total
23 income. We're recognizing that it's

1 distributed between two households.

2 And incidentally, I am going to talk
3 faster and skip over. I'm not going to spend
4 that much time on every slide, and I've
5 talked about a lot of this.

6 Legal presumption should be based on
7 facts similar to the situation to which the
8 presumption is applied. Now, for some
9 reason -- and it's a little bothersome to
10 me -- a lot of child support review panels,
11 especially legislators, don't think in terms
12 of that a child support guideline is a legal
13 presumption. When you go into court, the
14 guideline acts as presumptive evidence. It
15 says, These are the facts that apply to this
16 case. So there shouldn't be arbitrary
17 features about it.

18 And if you want to look at a little
19 case law, you can dig up Leary vs. U. S.
20 It's kind of a funny case. This was the
21 Timothy Leary. It's about marijuana and the
22 presumptions of what was illegal about
23 possessing. It's a little amusing seeing how

1 dated it is. But it talks about the
2 applicability of the underlying facts of a
3 presumption and whether they apply to a case
4 currently or not.

5 MS. DAVIS: Can I ask a question,
6 please?

7 MR. ROGERS: Yes, certainly. And your
8 name is?

9 MS. DAVIS: Penny Davis. Penny, like
10 the coin. Under the normal standard, the way
11 most states do the child support guidelines,
12 there is a presumption that they use figures
13 based on total income of both the father and
14 the mother as if they live in one household.

15 MR. ROGERS: That is the --

16 MS. DAVIS: Most common.

17 MR. ROGERS: That is the case. And
18 Jane can correct me if I'm wrong. That's the
19 case in all Income Shares states except for
20 Kansas.

21 MS. DAVIS: Okay. Now, the one that
22 you're proposing seems that there are two
23 separate households.

1 MR. ROGERS: Well, I'm taking two
2 approaches. There is a subtle difference.
3 One is we're going to take Income Shares data
4 and then adjust it for the extra cost of the
5 second household. And the other approach is
6 we're going to start out with two separate
7 households and then looking at what kind of
8 data are available for that.

9 MS. DAVIS: Okay. And you mentioned
10 that there is a possibility obviously that
11 one or both of the parties will subsequently
12 remarry. Okay. Does that -- if there is a
13 remarriage, does that factor in or do you
14 always treat it -- you talk about treating
15 things as they are in reality. And so does
16 your model here change when there's another
17 income involved in the household? So there
18 is not really two single households involved,
19 but you might have a single household here
20 and a married household here.

21 MR. ROGERS: Right. No. None of the
22 Income Shares models or any model that I know
23 of presumptively takes into account

1 remarriage, but they all allow for
2 deviations. And I think a court should
3 consider, Well, gee, he remarried some
4 supermodel and she has this really high
5 income, or, She remarried this commercial
6 real estate developer and he has a lot of
7 income. And in either case, you can
8 deviate. But I don't know of any guideline
9 that tries to handle income of a new spouse.
10 And one of the reasons is there's not a legal
11 duty of support.

12 MS. DAVIS: I understand that. But
13 just talking in terms of economics, trying to
14 deal with what the realities are, then
15 obviously there's maybe a problem for shared,
16 but there's also a problem of that being the
17 assumption for one household. There's also a
18 problem economically if you treat them as if
19 they are two separate households and no other
20 income --

21 MR. ROGERS: Right. I think the best
22 answer is, let's have guidelines that apply
23 in most cases. And certainly in the

1 situation when you first walk into court and
2 get divorced, you're not remarried when you
3 walk into court to get divorced. And then if
4 there's remarriage, at this time the best
5 answer is just to say we need to deviate,
6 whether it's the mother that has the new
7 spouse or the father that has the new
8 spouse.

9 As I said, there is one state that
10 already does the second household
11 adjustment. It's Kansas. It's built into
12 their guidelines. Virginia conducted
13 research on this issue several years ago.
14 Their advisory panel liked the idea, but it
15 was not enacted because -- not because of the
16 second household adjustment, but because
17 there are questions about the basic child
18 support obligation table itself.

19 Now, there is some confusion about the
20 second household discount and a parenting-
21 time adjustment. I think the simplest way to
22 clarify this is, what if the noncustodial
23 parent has no visitation for whatever

1 reason. Maybe he's on some overseas
2 assignment for a corporation or just on the
3 other side of the country. The noncustodial
4 parent has no parenting time. There is still
5 two households. There is still a reduction
6 in available income relative to as if you
7 lived together. So there's a need for a
8 second household discount whether there's
9 parenting time or not for the noncustodial
10 parent. The parenting-time adjustment is a
11 completely separate issue. The second-
12 household adjustment is strictly for the
13 added cost of the adult's extra housing
14 cost. It's nothing to do with the child's.

15 Okay. Now, the basic idea for the
16 second-household adjustment is to simply
17 estimate the cost of the extra housing. Now,
18 one of the first issues can be, Well, which
19 parent's housing because housing costs vary
20 by income. The higher your income, you are
21 going to have more money to spend on
22 housing.

23 To me the obvious answer was, let's

1 average the income, and the second house
2 would be equal to the average of the two
3 parents' income. So the idea is, estimate
4 the extra housing cost and then deduct that
5 from combined income. And then look up on
6 the standard cost table what the child costs
7 are as if combined income were actual, less
8 the extra housing cost. So we basically
9 determine combined gross income. Then we
10 still need to calculate the percent shares of
11 the total because that's going to be the
12 Income Shares calculation. Then we want to
13 estimate the cost of the extra housing but
14 not the parenting-time cost. Subtract this
15 housing cost from combined income. Then use
16 that figure for the look-up of the child
17 costs, and that child costs figure is then
18 associated with the combined income in
19 total.

20 I'm going to try and talk faster to get
21 through some of the lesser important slides.

22 The data that I use for this were from
23 the Department of the Treasury Internal

1 Revenue Service. And they set housing
2 allowances and other allowances for taxpayers
3 who are in arrears and they want to say,
4 Okay, here are acceptable allowances, and
5 then they look at their leftover income for
6 their own purposes.

7 And that data is by county for
8 different numbers of family sizes. And
9 basically, we subtract a couple of these
10 columns to come up with adult housing costs.
11 And then we compare it to county data for
12 income from census and do some statistical
13 estimate, and we end up with housing costs
14 including utilities based on the IRS data.

15 And then the final step, the Income
16 Shares cost tables in Alabama are based on
17 gross income, pre-tax income. So that the
18 housing costs we deduct are comparable, we
19 calculate an average tax on that -- income
20 tax on that income, not the marginal but the
21 average, and then gross it up and subtract it
22 out.

23 MS. DAVIS: Time out.

1 MR. ROGERS: Yes.

2 MS. DAVIS: I have a question.

3 MR. ROGERS: Okay.

4 MS. DAVIS: Okay. What you're saying
5 here is that you're going to choose a
6 figure -- like if I lived in Tuscaloosa
7 County, there would be one figure for that
8 that would be plugged into Rule 32 -- that's
9 whatever rule number it is now -- for a
10 defendant and plaintiff that live in
11 Tuscaloosa County for a second household or
12 would it be based on --

13 MR. ROGERS: Okay.

14 MS. DAVIS: Is it going to be based on
15 individual --

16 MR. ROGERS: Let me clarify. What
17 you're thinking is I have a number for each
18 county. That's not what I ended up with.

19 MS. DAVIS: That last slide. Go back
20 to that last slide.

21 MR. ROGERS: All right. Here is what I
22 did. I ended up with -- all right. Here is
23 what I ended up with. I ended up with a

1 table of housing costs with a column of
2 income numbers --

3 MS. DAVIS: Take Autauga County.

4 MR. ROGERS: Well, this is what I used
5 for the input calculations. This is not what
6 I ended up with. I think -- let's keep in
7 mind where we end up. We have -- like your
8 child cost schedule, I have incomes, low to
9 high. And then I have housing costs, one
10 adult, cost low to high. And it's not
11 county. It's income and cost, just like the
12 child support cost schedule.

13 The way I got that is the fact that
14 there is this county data, and the IRS
15 numbers vary according to median income. And
16 that may not be a good way for them to do it,
17 but that's how they do it. And what that
18 means is, I have some counties with low
19 income and some counties with high income,
20 and the costs give me numbers associated with
21 low income and high income. So I just did
22 some statistical analysis on the low income
23 to high income and then created a table from

1 that.

2 MS. DAVIS: So if he makes a hundred
3 thousand dollars a year -- or is it the total
4 of two?

5 MR. ROGERS: Uh-huh.

6 MS. DAVIS: The total of he and his
7 ex-wife is a hundred thousand, and me and my
8 ex-husband are fifty thousand. Would the
9 figure you plug in for the second household
10 be twice as much?

11 MR. ROGERS: It's not twice as much.
12 I'm trying to remember. I think I have -- I
13 can't remember if I put it in an appendix or
14 not, but I can print those numbers out. But
15 the numbers I use are by income, not by
16 county. So I would use the same housing
17 figure for the two of you regardless of which
18 county you're in because it's based on your
19 income. But I used county data which had low
20 income for some and high income for others.

21 MS. DAVIS: Okay.

22 MR. ROGERS: All right. Good question,
23 though.

1 And where did we leave off? Okay. All
2 right. Here is an example. And let's see.
3 If you look at the BCSO table in Policy
4 Studies' report, these are the numbers you'll
5 find for a one-child case. We have five
6 thousand dollars for the noncustodial
7 parent's income, and three thousand for the
8 custodial. Combined income is eight
9 thousand. Based on my statistical estimates,
10 the cost of a second house is seven sixty-one
11 on an after-tax basis. And to have income
12 after tax to pay that, you have to have a
13 thousand twenty before-tax income. So the
14 total housing cost is a thousand and twenty.
15 So we subtract a thousand and twenty from
16 eight thousand. So the new look-up value is
17 six thousand nine hundred and eighty. And
18 the child costs associated with this figure
19 is eight hundred and thirty-six dollars. So
20 now with the second-household adjustment, we
21 associate the eight thirty-six with the eight
22 thousand. That's the child costs taking into
23 account that available income is sixty-nine

1 eighty, not eight thousand. But we still
2 have the look-up at eight thousand because
3 that's how we define combined gross income.
4 It's a very simple idea.

5 MR. ARNOLD: I have a question,
6 please. Steve Arnold.

7 MR. ROGERS: Yes.

8 MR. ARNOLD: I'm seeing -- I think
9 we're building the blocks to get to the
10 ultimate conclusion. The eight thirty-six is
11 what is built in now to the table that you're
12 creating --

13 MR. ROGERS: Right.

14 MR. ARNOLD: -- or suggesting here --

15 MR. ROGERS: Right.

16 MR. ARNOLD: -- for combined income of
17 actually eight thousand.

18 MR. ROGERS: Right. What we're saying
19 is --

20 MR. ARNOLD: And is this on a
21 presumption, though, that there is indeed a
22 second household? What is the presumption?

23 MR. ROGERS: The presumption is that

1 there is a second -- there's housing for the
2 second adult.

3 MR. ARNOLD: All right. What if there
4 isn't housing for the second adult?

5 MR. ROGERS: Then that would be a --
6 say they move back in with their parents?

7 MR. ARNOLD: Yes. Or maybe in a
8 halfway house. That happens, you know.

9 MR. ROGERS: I guess my first reaction
10 is --

11 MR. ARNOLD: I'm not arguing.

12 MR. ROGERS: I know.

13 MR. ARNOLD: I'm trying to understand.
14 Your initial presumption is --

15 MR. ROGERS: That's a good question.

16 MR. ARNOLD: Your initial presumption
17 is that we're not testing against reality.
18 Yet your presumption here is not actually
19 tested against reality.

20 MR. ROGERS: All right. I'm going to
21 answer your question, but let me point out a
22 couple of things.

23 MR. ARNOLD: I would like to know.

1 Thank you.

2 MR. ROGERS: This nine twenty-one is
3 the presumptive figure in the 2004 PSI
4 table. So the difference here -- it's not
5 enormous. It's only about eighty dollars.
6 But it takes into account the differences in
7 available income.

8 Now, does it fit the actual facts.
9 Well, I guess my first reaction is, why is
10 the noncustodial parent not having his or her
11 own separate housing. Maybe because this is
12 too high, and it may not take into account
13 child-related tax benefits and so on. It
14 does assume that each of the parents has
15 their own separate housing. So that's the
16 answer. And if for some reason one of the
17 parents chooses to move back in with their
18 parents or whatever, the court could
19 deviate. But I think it's a more reasonable
20 expectation, and including for the best
21 interest of the children, that they be able
22 to go spend time with both parents in
23 comparable housing.

1 MR. ARNOLD: All right. My next
2 question then is, does not that model cause
3 the recipient parent to, in part, even though
4 it's a small nominal number, subsidize the
5 paying parent's housing.

6 MR. ROGERS: No. It puts them on equal
7 footing.

8 MR. ARNOLD: I don't see that. Help me
9 understand how you think they're on equal
10 footing.

11 JUDGE HUGHES: Mark, let me respond to
12 something in this part. You have that now in
13 anything. You may have the custodial parent
14 that's living with their parents too, and
15 you're applying the guidelines. And what we
16 haven't had is the attorneys or the parties
17 knowing what it's based on so that they could
18 ask for a deviation based on that. This
19 would be one of those areas in that -- this
20 is based on you both having separate
21 housing. And if one of them does not at that
22 point, then the other would be able to ask
23 for a deviation. As in many times now,

1 rather than going through the part of trying
2 to justify deviation, they just go ahead and
3 accept the guidelines because it doesn't make
4 that much difference anyway. But anything
5 that would be outside the basis for the table
6 would be grounds for a deviation, as it is
7 now. But like I said, nobody knew what it
8 was based on before other than the members of
9 the Committee who had had this. There is
10 nothing that's been published.

11 MR. ARNOLD: I understand and fully
12 appreciate that. My question is really
13 directed toward understanding what are the
14 presumptions that are propping up his model.

15 MR. ROGERS: This one? It clearly
16 assumes that both parents either pay rent or
17 a mortgage, pay on utilities such as
18 electricity, natural gas, and those types of
19 utilities. I think --

20 MS. DAVIS: Can I --

21 MR. ROGERS: I think this is a more
22 rational starting point than, number one,
23 they're still living in the same house or,

1 number two, that one or both of them have
2 moved back in with their parents. And this
3 is a more rational starting point for
4 deviating if the circumstances differ.
5 Because what would we like to have happen --
6 and we have to remember throughout this
7 discussion and this is -- and being a parent,
8 I have to remind myself too that you always
9 want to spend more on your children, and you
10 always wish you had more money to spend on
11 your children. But at the end of the day or
12 at least at the end of the month, you have
13 something called a budget.

14 And all of these numbers reflect
15 typical spending on children, and there's a
16 wide range of what parents actually do
17 spend. Some are cheap. Some are generous.
18 But these would be typical spending numbers
19 based on the fact that both parents have
20 separate housing. Another question.

21 MS. DAVIS: Going to your point number
22 two where you have a cost of the second house
23 that has income of four thousand. That's

1 half of eight thousand. That's based on your
2 chart, your county chart numbers.

3 MR. ROGERS: Right.

4 MS. DAVIS: Were those based on single
5 households, or are they based on households
6 where there are two people?

7 MR. ROGERS: Single houses, on
8 one-adult households.

9 MS. DAVIS: Your number two is saying
10 both the custodial and noncustodial parent
11 have an average housing cost --

12 MR. ROGERS: What could happen is --

13 MS. DAVIS: -- of seven sixty-one; is
14 that correct?

15 MR. ROGERS: Right. Each could have
16 their own housing cost at seven sixty-one.
17 Now, it could be something different because
18 one parent could be spending less, and one
19 parent could be spending more. But on
20 average, this is about right.

21 MS. DAVIS: Or that basically a
22 thousand and twenty dollars of their gross
23 income is being spent on a house.

1 MR. ROGERS: Right.

2 MS. DAVIS: Monthly housing.

3 MR. ROGERS: Right.

4 MS. DAVIS: Does that house expense
5 include the utilities and --

6 MR. ROGERS: Yes, it does.

7 MS. DAVIS: Okay. Thank you.

8 MR. ROGERS: It's higher at higher
9 incomes and lower at lower incomes.

10 All right. The other alternative is to
11 base data on direct spending on children.
12 And I'm jumping ahead, and I'm going to beg
13 your patience for me to address this more
14 later.

15 Income Shares is what's known as an
16 income equivalence approach. What that means
17 is, it's based on a statistical technique
18 that looks at changes in a household's level
19 of well-being with and without children and
20 then making a comparison of spending between
21 the two households to measure child costs. I
22 don't want to get into detail now.

23 But the other alternative is to base

1 child costs on reported spending on children
2 by parents. And that is done through the
3 Consumer Expenditure Survey, and the U. S.
4 Department of Agriculture compiles their
5 numbers based on those. So it's a little
6 extra layer.

7 But Cost Shares is basically saying
8 what is reported as spending on children and
9 let's use that for the child costs figures.
10 The concept is not a foreign concept because
11 all states use part -- have parts of their
12 guidelines based on the Cost Shares idea,
13 such as for medical insurance premiums. The
14 idea is, Well, what do you actually spend on
15 medical insurance. And child care, Let's see
16 your receipts, What do you spend on child
17 care. Then that goes into the calculation.
18 Cost Shares says, Let's do that for all
19 categories. And it's primarily based on data
20 from the USDA plus taking into account
21 housing costs from the U. S. Department of
22 the Interior.

23 Full Cost Shares has been considered in

1 Minnesota and in Georgia but not adopted.
2 And it's actually been favorably received in
3 Montana by their guideline review panel,
4 though they have not been able to get any
5 movement on that. And it's being looked at
6 in New Hampshire. Minnesota and Georgia both
7 since adopted different versions of Income
8 Shares. Long stories for both of those.

9 Now, in my study, I'm focusing
10 primarily just on the child costs schedules.
11 If you look at some of my earlier economics
12 papers on Cost Shares, I include what I call
13 the full methodology for Cost Shares. That
14 will include child-related tax benefits as a
15 cost offset. Basically, they act as a rebate
16 for parents with children. And then also
17 parenting-time adjustments. But for portions
18 of this study, those are not included in the
19 Cost Shares calculations.

20 MS. DAVIS: Do I understand you
21 correctly to say that no state now uses the
22 Cost Shares that you're --

23 MR. ROGERS: No state uses the full

1 Cost Shares.

2 MS. DAVIS: -- that you're
3 recommending?

4 MR. ROGERS: That's correct. All
5 states use the Cost Shares concept for
6 portions of their guidelines.

7 All right. There are two key data
8 sources, as I mentioned. The Family
9 Economics Research Group, FERG, with USDA and
10 Department of the Interior's rental surveys.
11 And even though it's a rental survey, it's
12 for owner-occupied types of housing for the
13 data that are used. And there are categories
14 for housing, food, transportation, and so
15 on.

16 The USDA data are on a Marginal Cost
17 basis except for three key components:
18 housing, transportation, and other. And
19 basically, they're per capita. And that's
20 not appropriate. Let me give you an
21 example. Suppose you've got housing expenses
22 of twelve hundred dollars for a household,
23 two adults and two children. The USDA would

1 say that, Well, there are two children in a
2 four-person household, so half of those
3 housing costs belong to the child or the
4 children. Now, in reality, if two adults are
5 living in a house that don't have children,
6 they're going to have most of the same
7 housing costs even though they don't have
8 children. The marginal or the added child
9 costs are less than per capita. Two adults
10 still have to have a living room. They still
11 have a kitchen. Still have to have a garage
12 and a yard and so on. If you have children,
13 you can add a bedroom, you add a second
14 bedroom. Maybe you add a bath. So the
15 marginal costs are less than per capita. So
16 Cost Shares substitutes data for the per
17 capita housing costs.

18 MS. DAVIS: Can I ask a question?

19 MR. ROGERS: Sure.

20 MS. DAVIS: On the Cost Shares here
21 where you're talking about housing expenses
22 and all that allowed, if you accept the
23 second-household formulation or calculation

1 in there, is that not duplicating this?

2 MR. ROGERS: It is similar. That is a
3 very good question, and I have to admit, it's
4 sometimes hard to clarify the difference.
5 With the Income Shares, the second -- I
6 probably should have practiced this because
7 that's a very good question. The Income
8 Shares of the second-household adjustment
9 does bring the income level to what's really
10 available. So we're going to a correct
11 available income definition, but we still
12 have a standard of living based on intact
13 family data. So we're still trying to keep
14 the intact family standard of living with the
15 children but reflect the actual available
16 income. And I know this is like, All right,
17 what's really different. But with Cost
18 Shares, we're looking at a single parent's
19 standard of living for both households. So
20 the difference is with Income Shares, less
21 the second household discount, it's an intact
22 family standard of living but reflecting
23 actual available income. With Cost Shares,

1 it's a single parent standard of living in
2 both households, two separate households.

3 MS. DAVIS: All right. In the Cost
4 Shares as opposed to the income approach,
5 Cost Shares, when you're talking about using
6 a modified version. Again, if he's married
7 and has two children, there's four people in
8 the household. I'm married and have no
9 children. You're saying a substantial amount
10 of that housing cost -- that you can't take
11 his household income and put it twenty-five
12 percent, twenty-five percent, and twenty-five
13 percent.

14 MR. ROGERS: No.

15 MS. DAVIS: In your approach, you're
16 saying more of the costs go to the adult
17 because the housing costs are there. But
18 aren't you also saying that in the second
19 household? It looks like you're doing --

20 MR. ROGERS: Well, all of these
21 approaches assume that you have not
22 remarried. Well, actually, Income Shares
23 assumes you're still in the same household

1 until there is an adjustment. But you're not
2 taking into account any remarriage in Cost
3 Shares, and it's based only on both parents'
4 income and only their child costs. I'm not
5 sure I answered your question.

6 MS. DAVIS: When you're trying to look
7 at the additional cost for two children,
8 you're reducing -- that's a smaller sum than
9 if you -- amount than if you just said you've
10 got four people in the household, and that's
11 twenty-five percent.

12 MR. ROGERS: Right.

13 MS. DAVIS: Okay. So you're reducing
14 that amount that the child actually costs
15 because you're taking -- you're not
16 considering part of the housing costs. But
17 when you look at the second-housing-cost
18 calculation, you're not using your -- you're
19 calculating the full cost of the house there,
20 too.

21 MR. ROGERS: Right. When we do the
22 second-household adjustment, it's as if the
23 adult lives by him or herself. But then when

1 we do the child costs, we look at the added
2 cost to house them. It's as if we expand the
3 house. Now, there is no dramatic conceptual
4 difference between Income Shares' standard
5 and Cost Shares in that they both attempt to
6 measure the marginal cost of the child. Now,
7 there are some -- there are differences, but
8 the theoretical idea is the same, what is the
9 additional cost of the child that the parents
10 don't have when they don't have children. So
11 what's the additional cost in all of these
12 methodologies.

13 In the Cost Shares, we're deducting out
14 day care and medical expenses other than two
15 fifty per child per year for out-of-pocket.
16 Day care, private tuition, are treated as
17 add-ons. There are miscellaneous school
18 expenses included. And as with Income
19 Shares, the standard version or the modified
20 version, the data are really just for one,
21 two, and three children, and the cost
22 schedules for four, five, and six are based
23 on equivalent scales. And with my brief

1 amount of research, I have not been able to
2 find methodologies that are better than what
3 PSI uses for their extension, and that's
4 based on data from the National Research
5 Counsel.

6 MR. BAILEY: Mark, Gordon Bailey.

7 MR. ROGERS: Yes.

8 MR. BAILEY: The data that you've shown
9 us, is this Alabama-specific?

10 MR. ROGERS: The housing adjustment is
11 Alabama-specific for Income Shares.

12 MR. BAILEY: What about this Cost
13 Shares?

14 MR. ROGERS: For Cost Shares, data are
15 from the mid-South region for the Department
16 of the Interior, which has a lot of data from
17 Alabama. So it's regionally oriented as
18 close as possible.

19 MR. BAILEY: And that's as close as you
20 can get? Because we were searching for
21 Alabama data.

22 MR. ROGERS: That's as close as you can
23 get without something like a quarter-

1 of-a-million-dollar-or-so study. And even
2 then, I'm not sure it would be good data.
3 The key thing is, other than housing -- and I
4 think housing stands out. Other than
5 housing, child costs vary more by income than
6 any other factor. And you have -- within
7 Alabama even, you have low income areas and
8 high income areas and the same nationally.
9 And child costs are very similar in how they
10 vary by income across the U. S. with the
11 exception of housing.

12 Now, what's interesting about the
13 housing component is you may think, Well, we
14 live in a high cost area for housing, even
15 taking into account whatever your income is.
16 Well, one thought might be, We're in a high
17 cost area for housing, so the child costs
18 should be higher for that child's share of
19 housing. But you may actually have the
20 opposite effect. If you're in a high cost
21 area for housing and the adults have to buy
22 their housing anyway, they may have less
23 income to spend, not just on the child's

1 share of housing, but they may have less
2 income to spend on every other part of the
3 child's cost, also. So a high housing cost
4 area may increase child costs, but it
5 actually could reduce child costs because you
6 can't afford to spend as much. So I actually
7 treat that neutrally, treat it as it has just
8 an equal effect, whether it's a high housing
9 cost area or a low housing cost area.

10 And the BCSO for Alabama's Cost Shares
11 tables has a self-support adjustment. The
12 earlier version of my paper did not have that
13 shaded in, but the one dated March 31st does
14 have it shaded in. And there are two general
15 ways of doing a self-support calculation, and
16 they actually end up very similar. So it's
17 not a major issue, if you want to improve on
18 yours, which way you go. But I talk about
19 one in particular that I think is a little
20 more standard.

21 And there's a difference, slight
22 difference, between the PSI table and my
23 tables. And that's basically I'm using 2005

1 poverty statistics, and I believe they used
2 2003. And that's just a trivial technical
3 updating, not anything major. And
4 essentially, for income above this level --
5 and this is the same methodology that PSI
6 uses. And I think there are small
7 differences in ways you can approach this,
8 but this is a very reasonable approach.

9 And I agree with the approach that even
10 at low incomes, you need to provide some
11 incentive for work for the noncustodial
12 parent. Instead of allocating all income
13 above self-support to additional child
14 support when there's income, some fraction of
15 that is retained by the noncustodial parent
16 for the reward of looking for a better paying
17 job, working longer hours, or getting
18 schooling and improving him or herself. So a
19 small portion, somewhere between five and ten
20 percent, is retained by the noncustodial
21 parent for work incentive. And we want
22 that. That's in the child's best interest
23 that the noncustodial parent want to improve

1 him or herself in the workplace. That is in
2 the child's best interest.

3 MS. DAVIS: How do you do that for the
4 custodial parent that might also want to
5 improve themselves? How do you calculate
6 that in?

7 MR. ROGERS: It's not calculated, and I
8 will get to that. Now, the other approach
9 that I don't discuss actually does do that,
10 and that's where you look at available -- and
11 this is in the -- the Cost Shares original
12 methodology does do a calculation for both
13 parents. And it looks at available income
14 above poverty needs for both parents and then
15 prorates based on that. Economically, it's
16 probably a little more sound, but it doesn't
17 buy you a whole lot more than a little more
18 simpler approach.

19 MS. DAVIS: Which is more economically
20 sound?

21 MR. ROGERS: The Cost Shares
22 approach -- it's not in this paper.

23 MS. DAVIS: That doesn't consider when

1 the noncustodial --

2 MR. ROGERS: No. The original Cost
3 Shares measure does this. It would take --
4 and you can do it in this version. It
5 basically says, How much income does each
6 parent have above the poverty level. We're
7 going to set aside whatever income each
8 parent has at the poverty level. It's
9 basically taken away from the calculation.
10 And so we only look at income above the
11 poverty level for both parents and prorate
12 based on that. Now, one --

13 MS. DAVIS: That's not in this
14 approach?

15 MR. ROGERS: No. That's an alternative
16 you could consider, but this is a little
17 simpler. And there are reasons that it's
18 okay to ignore the custodial parent's -- and
19 I'll get to that in a minute but --

20 MS. DAVIS: Also, on the second
21 household, do you also calculate in that same
22 figure for the custodial parent as you did
23 for the noncustodial parent?

1 MR. ROGERS: For the Income Shares for
2 the second-household adjustment, it has the
3 same self-support calculation. It just
4 didn't say that. It's the same calculation.
5 But, now, you're going to end up with pretty
6 much the same result either way. I mean,
7 there are some small differences. It's
8 really a matter of what do you think is
9 easier to calculate probably more so than
10 which is theoretically more sound. That's a
11 lesson I've adapted to myself because I'm
12 sort of a stickler for which is really purely
13 more economics based, but I've learned that
14 sometimes simpler is worth the trade-off.
15 And this is a little simpler.

16 DR. PATTERSON: Ben Patterson. It
17 seems to me that if -- maybe the difference
18 is insignificant. Maybe it doesn't matter.
19 But it seems to me what we're talking about
20 is trying to go for the theoretically sound
21 approach even if it is a little more
22 difficult.

23 MR. ROGERS: It is not a big deal to --

1 I mean, I can write up a short memo on that.
2 But what it really means is, you take both
3 parents' incomes and subtract from both the
4 poverty thresholds, and then you prorate
5 child costs based on shares of combined
6 income above the poverty level. And one
7 parent may have zero income above the poverty
8 level. Both parents may have zero income
9 above the poverty level. Then at that point,
10 you just have to pick a minimum -- if you
11 want to, pick a minimum award and say, There
12 is some circumstances that we believe where
13 that will be paid. It's not a major issue to
14 develop that calculation. It's not a -- in
15 fact, I believe a few more states are leaning
16 toward that.

17 I keep trying to speed up, but I don't
18 mind the questions.

19 All right. Here is an example. Here
20 we assume that the noncustodial parent has
21 fourteen hundred in monthly gross income.
22 The net income figure is eleven seventy-two.
23 The poverty threshold, seven ninety-eight.

1 Net income above the poverty threshold is
2 three seventy-four. And the children's share
3 would be ninety-one percent for two children
4 based on this sharing formula. So that comes
5 to three forty. But if we just use the
6 standard cost table without this adjustment,
7 it would be three seventy-six. And if the
8 award were three seventy-six, it would push
9 the obligor thirty-six dollars a month below
10 the poverty threshold. So that's basically
11 how that works. And Policy Studies has a
12 good example of this calculation in their
13 report.

14 And so the key assumptions of Cost
15 Shares, trying to move forward, is expressed
16 in gross income and also in combined gross
17 income, even though it averages the income
18 between two households. Child-related tax
19 benefits are not built into the cost
20 schedule. That's a separate calculation.
21 Income is taxable. The schedule does not
22 include child care, extraordinary medical,
23 children's share of medical insurance

1 premium, nor private tuition. I believe this
2 is pretty much the same as the Income Shares
3 inclusions. Two hundred and fifty per child
4 per year for ordinary out-of-pocket medical
5 expenses. It's based on average expenditures
6 on children zero through seventeen, and
7 there's no built-in adjustment for parenting
8 time.

9 MS. DAVIS: Let me ask a question on
10 the Cost Shares approach. I understand that
11 if you have a poverty level, you'll do that,
12 and the simple way of doing that would be to
13 say a flat level for any parent, as the child
14 support guidelines do now. But doesn't this
15 Cost Shares also deal with a parent who is
16 making eight thousand dollars?

17 MR. ROGERS: Well, the cost levels vary
18 by income so there's a --

19 MS. DAVIS: But your Cost Shares
20 approach doesn't -- would you apply that to
21 parents that are making eight thousand
22 dollars of combined income?

23 MR. ROGERS: Well, you apply it at all

1 income levels. The cost schedule goes up to
2 twenty thousand per month.

3 MS. DAVIS: Okay. So it would be the
4 higher income people, this would factor in.

5 MR. ROGERS: Right.

6 MS. DAVIS: If your sole purpose was to
7 just deal with the poverty level, why
8 wouldn't you just have an approach that dealt
9 with that only on the lower level, minimum
10 income level, and not use that same approach
11 for the person that's making ten thousand
12 dollars a month? It's not really an issue
13 then.

14 MR. ROGERS: No. The self-support
15 calculation only applies in what's known as
16 the shaded area of the cost schedule, and
17 that's where, when you do the self-support
18 calculation, income above self-support times
19 that percentage when that figure falls below
20 the standard cost award.

21 MS. DAVIS: So would this self-support
22 calculation come into play if we're getting a
23 divorce and we make ten thousand dollars a --

1 MR. ROGERS: No, not at all. It's only
2 for that very low, very low income shaded
3 level.

4 Now, I did forget to discuss, it is
5 correct that single-parent data have more low
6 income families than the intact family data.
7 But the single-parent data, you have more
8 than just low income levels. There is not as
9 many high income families, but there are
10 some. And the Cost Shares statistically
11 estimated with low and higher income levels.
12 There are not as many high income figures in
13 that calculation.

14 Let's see. And when we compare the
15 alternative cost figures, they come out the
16 way you would expect theoretically. The old
17 Rule 32 is the solid red line. And actually,
18 all three of the newer proposals are a little
19 higher for one child. This is just for one
20 child. They're higher at the low end with
21 the PSI standard proposal the highest. And
22 the PSI current proposal is higher than Rule
23 32, except where it's essentially equal just

1 very briefly at upper middle incomes or
2 middle incomes considering that it's combined
3 right here. And as you would expect, Income
4 Shares of the second-household adjustment is
5 a little bit lower than the standard PSI
6 figure. And, of course, it actually tracks
7 the PSI figures because it's sort of like
8 lagged due to the differences in housing
9 costs. And Cost Shares is moderate -- well,
10 it becomes more and more different at this
11 range. If you extend it, actually they'd
12 come close together toward the end. And Cost
13 Shares is lower because it's two separate
14 households.

15 Now, I would like to point out, some
16 criticize Cost Shares as being too low
17 because you're only looking at half the
18 income. That's not true. You're looking at
19 combined income but between two households.
20 And if that argument were correct, Cost
21 Shares would be half that of Income Shares.
22 And it's nowhere near half the level of
23 Income Shares. The reason for that is

1 actually matching the theoretical
2 expectation. The percentage spent on
3 children in single-parent households is
4 higher. These percentages, as a share of the
5 single-parent household income, is higher
6 than the percentages for combined intact
7 family spending. So we actually use higher
8 percentages for the Cost Shares cost figures
9 and end up with moderately lower numbers
10 instead of half-way cost as some imply. But
11 if you look at the numbers, that just doesn't
12 hold up.

13 Then for two children, the differences
14 are not as dramatic except for Rule 32
15 further out, and I think that's due to the
16 outdated methodology, which we can talk about
17 later on. There is a lot of bunching up on
18 the very low end.

19 And for three children, we have the
20 current Rule 32 the real outlier once you
21 have much of any income at all. The PSI
22 modified is on the low end here, and then
23 Cost Shares is on the low end further out.

1 But on average, the PSI adjusted is sort of
2 the middle ground. I'm backing up here.
3 Sort of the middle ground. And it reflects
4 available income.

5 Now, once we get past the three --
6 backing up to three children. Once we get
7 past three and go to four, five, and six, the
8 patterns are going to be identical to the
9 three child because all we're doing is using
10 ratios from equivalent scales. The relative
11 numbers stay pretty much the same, but you'll
12 see the dollar values increasing. And that's
13 going to be the difference. Otherwise, you
14 would think it was the same chart. The
15 numbers are going up, but the pattern is
16 staying the same. And the relative positions
17 are staying the same.

18 And for just comparing some
19 differences -- and one of the issues to
20 consider is the fact that the current Rule 32
21 study is old. It's not just a 1984 study.
22 It's a 1984 study based on 1972 and '73
23 data. So you've got child support guidelines

1 that are about a little over thirty years out
2 of date. Got child support cost schedules
3 that are thirty years out of date.

4 And the three alternatives have more
5 current data. Actually, the two versions of
6 PSI have the most current data using the '96-
7 99 Consumer Expenditure Survey. Cost Shares
8 uses the USDA data based on '90-92 data with
9 updating using the CPI and the 2005
10 Department of the Interior survey.

11 And in terms of the estimation
12 technique, the Income Shares -- all three
13 versions use income equivalents. The current
14 version uses a methodology that many consider
15 just out of date and generally not accepted.
16 And we'll get to that later. It's based on
17 comparing changes in food spending for the
18 household. The current PSI is based on the
19 Rothbarth technique which compares changes in
20 household spending on adult clothing, and
21 Cost Shares is a modified USDA approach.

22 And current Rule 32 is based on intact
23 data. PSI standard, intact data. The

1 adjusted, this would reflect actual available
2 income but still apply an intact family
3 standard of living. Cost Shares uses two
4 single-parent households. And we'll get to
5 these issues.

6 None of the tables build in parenting-
7 time cost of the noncustodial parent. And
8 we'll get to the child-related tax benefit
9 issue. Only a fraction of the child-related
10 tax benefits are built into the two -- the
11 three Income Shares tables and not at all
12 into the Cost Shares table. All of the
13 approaches try to estimate the marginal
14 cost. All treat day care as an add-on.

15 There is a big difference in the
16 current treatment of Rule 32 medical expenses
17 compared to the three new alternatives. The
18 current one has two hundred per family of
19 four per year. And that has to be awkward
20 for any other scenario. And the updated
21 tables are two fifty per year per child,
22 which is going to be much more manageable in
23 terms of what's assumed.

1 Self-support is built into all four
2 schedules partially. The current Rule 32
3 table is vastly out of date. The other three
4 alternatives are much more current. And
5 because of the increase in the self-support
6 level, all three new alternatives have a
7 somewhat higher lower limit for the
8 schedule. The difference is here where just
9 the difference is in the newer poverty
10 threshold being used. And the newer tables
11 go to twenty thousand combined gross income.
12 All three PSI tables are realigned for
13 Alabama's distribution of income to the U. S.
14 but not Cost Shares.

15 And just comparing alternative awards,
16 it's very similar to the relative positions
17 in the total cost. So I'm just going to skim
18 through that. These are comparisons of when
19 the custodial parent has fifty percent of the
20 noncustodial parent gross income and when the
21 incomes are equal. Just going to cruise
22 through those, try and accelerate, even
23 though I think they're pretty charts.

1 Now, one issue I believe is -- at least
2 you need to think in terms of for rebuttal.
3 One of the issues is whether the award is
4 unjust or inappropriate. Common sense. Is
5 the outcome equitable and fair. So one of
6 the issues is to look at the presumptive
7 calculations. And on their face, are they
8 fair and, if they're not, why do we think
9 that they're not.

10 And there's no perfect way to analyze
11 whether a presumptive award is fair or is
12 completely economically sound in terms of the
13 outcome. But one way that is often used is
14 comparing the standard-of-living outcomes.
15 And there are flaws in this. I'll be the
16 first to say that. But I think the flaws
17 primarily understate these effects.

18 So what we can do is we can take a
19 presumptive calculation using the standard
20 current worksheet with no other calculations
21 and then merely substitute the different
22 basic child support obligation tables and
23 then see what is the outcome with no other

1 calculations on the standard of living on
2 both households. And we're going to have to
3 make some assumptions on what might be
4 reasonable in those households.

5 So we start with the poverty
6 thresholds. And this was one of the first
7 parts of my paper, so it has an earlier
8 version of the poverty thresholds. It's
9 2004, and it would not be affected if I used
10 more current data because they're all
11 relative numbers that are updated using the
12 CPI. So if I used today's thresholds, the
13 outcomes would be the same.

14 And so we have poverty thresholds for
15 an adult by him or herself, then an adult and
16 one child, adult and two, and then three
17 children. And, of course, the poverty
18 thresholds get higher as you add children.
19 And I'm going to make an assumption. This is
20 just for illustration only, an example. It
21 doesn't mean it's the most common situation.
22 But it's one situation that's understandable,
23 and we can see what the outcomes are.

1 We're going to say that the
2 noncustodial parent has twenty-five percent
3 of the parenting time, and we're going to
4 prorate -- let me back up. We're going to
5 prorate the difference between the adult
6 cost, and the adult with children cost by
7 parenting time. So we're looking at the
8 difference between thirteen twenty and
9 ninety-eight twenty-seven and then prorating
10 that difference seventy-five/twenty-five.
11 And then we're doing the same thing for two
12 children, fifteen two nineteen minus ninety-
13 eight twenty-seven. Three children,
14 subtracting nineteen two twenty-three, taking
15 away ninety-eight twenty-seven and then
16 prorating the difference.

17 And these are the adjusted poverty
18 thresholds with parenting time for both, with
19 parenting time for both. And this is only an
20 illustration. It's not saying it's the most
21 common situation, but it's not uncommon
22 either.

23 And what would we expect if the

1 guidelines were to have an economically fair
2 outcome and that was the only calculation you
3 needed to make. Then if the parents' incomes
4 are equal, I would think a fair outcome would
5 be after tax, after child support, the
6 standards of living of both households,
7 taking into account both parents parenting-
8 time cost, then the standards of living
9 should be equal or close enough that we
10 didn't care.

11 Another outcome could be if one
12 parent -- it could be either the custodial or
13 the noncustodial parent. If one parent has
14 higher income, the child support award might
15 narrow the gap but not entirely. And it
16 shouldn't matter whether it's the
17 noncustodial or the custodial parent with the
18 higher income. But the higher income should
19 narrow the gap -- the award should narrow the
20 gap of the standard of living. But we would
21 not expect that the child support award would
22 widen the gap for the parent with the higher
23 income. We want this -- if it's equal, it

1 stays equal. If one parent has higher
2 income, then the gap is narrowed a little
3 bit. But we do not expect if one parent has
4 a higher income starting out, that that
5 parent ends up with a higher standard of
6 living after the award.

7 So here we have an example. We have
8 equal incomes, four thousand a month, forty-
9 eight thousand total. Then doing standard
10 tax calculations, standard deductions,
11 exemptions, and so on, a presumptive child
12 support award of eight thousand three hundred
13 sixty-four a year. And the after-tax income
14 of the noncustodial parent is twenty-seven
15 four ninety. And because of the award and
16 the child-related tax benefits, the custodial
17 parent's after-tax income is forty-eight
18 thousand five hundred seventy-three.

19 And this is just bean counter work.
20 It's nothing more than straight application
21 of tax code and just a blindfolded
22 calculation of the child support award. Just
23 bean counter work.

1 And then we apply -- look at the
2 poverty thresholds and then calculate the
3 ratio of these income figures to the poverty
4 threshold for each. And we find the
5 custodial parent has a rate -- has three
6 point five times the poverty threshold income
7 adjusted for parenting time while the
8 noncustodial parent has two point four six
9 times the poverty threshold income. So the
10 custodial parent ends up with a forty-two
11 percent higher standard of living taking into
12 account parenting time. And this is even
13 though they both start out with equal gross
14 incomes. That does not take into --
15 basically, we just do the very
16 straightforward presumptive calculation and
17 nothing else.

18 And we can do that calculation over a
19 wide range of incomes and situations. We can
20 do it for the custodial parent that has half
21 the gross income of the noncustodial, thirty
22 percent of the noncustodial, equal, the
23 custodial parent actually has thirty percent

1 higher, and custodial parent has a hundred
2 percent more or double the gross income.

3 So if we look for -- and this is for
4 two children. We see that the custodial
5 parent's standard of living as much as
6 twenty-six percent higher on the high end and
7 as much as eighty-five percent higher on the
8 low end. But I have to say, on the low end,
9 it's easier to get high percentages because
10 you have a low base.

11 But we also see for two children, the
12 custodial parent here has thirty percent less
13 gross income but actually ends up with a
14 higher standard of living. It's kind of a
15 peculiar outcome. The custodial parent
16 starts out lower before the award but, with
17 the award, ends up with the higher standard
18 of living.

19 And these all assume the award is
20 actually paid, and that might be an
21 unrealistic assumption here. But why do you
22 want an award that you either assume is too
23 high for self-support reasons or, if it

1 actually is paid, ends up with a peculiar
2 outcome. So either way, there's a problem.

3 MS. DAVIS: Can you go back to that
4 preceding chart?

5 MR. ARNOLD: Yes.

6 MR. ROGERS: Okay.

7 MS. DAVIS: That one. Let me see if I
8 understand it. Basically, the custodial
9 parent is getting eighty-three hundred
10 dollars and sixty-four dollars for two
11 children.

12 MR. ROGERS: That's yearly.

13 MS. DAVIS: Right, yearly. So when you
14 say their cost of living is that much
15 greater, if that eight thousand -- if that
16 money is actually going to the children, the
17 lifestyle is not that much -- is not that
18 different. It's just that you're paying for
19 three people, so you're spending that eight
20 thousand dollars on the extra food, the
21 clothing, the medical, and all that. So
22 saying their standard of living is that much
23 higher is probably not really accurate in

1 terms of the way the average person perceives
2 standard of living, the way I perceive
3 standard of living.

4 MR. ROGERS: Well, this example has
5 both parents incurring child costs. So you
6 have to take into account whether the
7 noncustodial parent can provide the same
8 standard of living to the children as the
9 custodial parent.

10 MS. DAVIS: I guess when I think of
11 standard of living, I'm thinking of the house
12 they live in, the neighborhood they're living
13 in, you know, that sort of thing. But are
14 you saying that this doesn't consider the
15 fact that the custodial parent who is
16 paying -- I mean, receiving eighty-three
17 hundred dollars, they're incurring more food
18 cost?

19 MR. ROGERS: Well, this takes that into
20 account by prorating according to parenting
21 time. Now, this does assume that the
22 noncustodial parent also provides housing as
23 well as the custodial parent.

1 MS. DAVIS: Where is the parenting time
2 on that?

3 MR. ROGERS: Well, we're prorating
4 these figures here.

5 MS. DAVIS: Can you go back to the
6 other one?

7 MR. ROGERS: The parenting time is
8 built into these numbers.

9 MS. DAVIS: No, the chart that you were
10 on before.

11 MR. ROGERS: Okay. Which one?

12 MS. DAVIS: That one right there. All
13 right. Let's not even adjust the adjusted
14 poverty threshold. Let's get to the after-
15 tax, after the presumption of child support
16 income --

17 MR. ROGERS: All right.

18 MS. DAVIS: Twenty-seven forty-eight.

19 MR. ROGERS: Right.

20 MS. DAVIS: There is where the big
21 difference is.

22 MR. ROGERS: Right. The custodial
23 parent is getting something like eighty

1 percent more income available than the
2 noncustodial parent.

3 MS. DAVIS: But they're also supporting
4 -- they're also paying the majority of the
5 expenses of the child.

6 MR. ROGERS: That's right. They're
7 paying the majority. But both parents are
8 probably providing housing, and both parents
9 also provide food and clothing.

10 MS. DAVIS: But the majority of the
11 clothing -- for example, you don't -- your
12 noncustodial parent is not buying a pair of
13 tennis shoes every time they need a pair or
14 dress shoes or --

15 MR. ROGERS: That is correct. This is
16 saying it's prorated twenty-five/seventy-
17 five. Now, how close is that to reality?
18 It's not going to be exact. But it's
19 illustrative that both parents --

20 MS. DAVIS: When you say twenty-
21 five/seventy-five, your calculations are
22 presuming that the noncustodial parents are
23 expending twenty-five percent of the cost of

1 the child on the child?

2 MR. ROGERS: Right.

3 DR. PATTERSON: Ben Patterson. It
4 seems like what you're trying to do is adjust
5 the need and compare the income to the actual
6 need.

7 MR. ROGERS: Right.

8 MR. PATTERSON: And even when
9 accounting for the need, there's a
10 differential.

11 MR. ROGERS: Right. What I was about
12 to say is, when we end up with adjusted
13 poverty thresholds here, that takes into
14 account that both parents are sharing the
15 child costs because we've got -- these are
16 the adjusted numbers here. The custodial
17 parent incurs costs, and the noncustodial
18 parent -- both incur costs. And the twenty-
19 five/seventy-five prorating is illustrative.
20 It could be different in any given case. In
21 fact, it's probably never exactly seventy-
22 five/twenty-five. But it illustrates, if one
23 parent's child costs are going down and

1 another is actually incurring something above
2 zero, we have to take that into account in
3 terms of the impact on the standard of
4 living. And this is illustrative. We have
5 one parent with twenty-five percent of the
6 costs and the other parent with seventy-five
7 percent. If that's the actual allocation --

8 MS. DAVIS: But you're equating parent
9 time with parent dollars.

10 MR. ARNOLD: That's right.

11 MR. ROGERS: That's right. Now, that's
12 a complex issue. I'll be the first to admit
13 that. For example, on a per diem basis, one
14 could also ask, Does it cost more for a child
15 on Tuesday during school or does it cost more
16 on a Saturday.

17 MS. DAVIS: If most of the custodial
18 parents are sending the clothes with the
19 child --

20 MR. ROGERS: You're absolutely right.
21 There are differences in what each parent
22 incurs, and there are different approaches.
23 One I actually prefer the best is the

1 Missouri approach, which divides costs
2 between duplicated costs -- duplicated fixed
3 costs, then non-duplicated variable -- I
4 forget all the categories. But there are
5 different ways of allocating the child
6 costs. By type, whether it's duplicated and
7 whether it's a variable, by parenting time.
8 And when you do that, it's similar to this
9 analysis. Is this perfect? No. Is it
10 illustrative of the problem of whether we
11 need to address both parents' child costs?
12 Yes. And that is the key point, that both
13 parents have child costs and when you only --
14 and even here, we're assuming a twenty-
15 five/seventy-five split.

16 MS. DAVIS: Cost.

17 MR. ROGERS: Right.

18 MS. DAVIS: But I guess my problem is,
19 if your formula is supposed to reflect
20 reality, I don't feel it does.

21 MR. ROGERS: Well, I think -- forty-two
22 percent is a huge difference. If this number
23 had been something like ten, I would have

1 said that your argument is enough to say that
2 ten percent isn't significant. But even when
3 one parent buys tennis shoes more often than
4 the other parent but one parent has to take
5 the child out to the movies more and eat out
6 more versus sending lunch money for school,
7 there are differences in both directions.
8 One parent may buy more tennis shoes. The
9 other parents may have to have higher food
10 costs because the child is on the weekends,
11 not the weekday. So it cuts both ways.

12 Question.

13 MR. BAILEY: Yes. Gordon Bailey. How
14 do you factor in the position of a
15 noncustodial parent that says, I pay child
16 support and that's all I'm going to
17 contribute to the child? How does that
18 factor into your scenario?

19 MR. ROGERS: I have two reactions to
20 that. One will probably surprise you. This
21 wouldn't fit that situation.

22 MR. BAILEY: Right.

23 MR. ROGERS: This is illustrative. And

1 if we expect the noncustodial parent to have
2 time with the children -- I think it's good
3 policy to expect the noncustodial parent to
4 have time with the child.

5 MR. ARNOLD: It doesn't mean they are
6 going to spend any money on them.

7 MR. ROGERS: No, it doesn't. It does
8 not. You're absolutely right. What's the
9 more realistic assumption? The noncustodial
10 parent typically has housing costs, still has
11 to pay utilities, you know, a little more
12 running water, always going to be food costs,
13 maybe not clothing, maybe clothing, usually
14 entertainment which is more expensive than
15 sending the child to school. So my point is,
16 it works both ways, and what's the more
17 rational expectation. And this is only an
18 illustration. What this suggests is there
19 should be a parenting-time adjustment. Does
20 it mean there should always be a parenting-
21 time adjustment? No. But it suggests that
22 there's good cause to build it into the
23 guideline. But then when you actually take

1 it on a case-by-case basis, maybe you don't
2 apply it in a particular case but --

3 MR. ARNOLD: Is your parenting-time
4 adjustment presumption based on the promise
5 of things to come or on the history of the
6 way things have been? Because in the real
7 world of litigation, I'm representing dad who
8 says, I want every minute I can get, and the
9 more minutes I get, the less support I've got
10 to pay. And then the Decree is done based on
11 the promise of going, I'm going to take him
12 fifty percent of the time. And then reality
13 comes out and says, See ya.

14 MR. ROGERS: That's the sixty-four-
15 thousand-dollar question.

16 MR. ARNOLD: The question is, what is
17 your presumption based on.

18 MR. ROGERS: Well, there's not an easy
19 answer to that. There's not.

20 MR. ARNOLD: You don't know what your
21 presumption is?

22 MR. ROGERS: What it boils down to is,
23 if you have a parenting-time presumption,

1 you're at risk for the issues you just
2 discussed. If you do not have a parenting-
3 time presumption, you're not at risk. You're
4 at certainty to have one parent pay some
5 costs twice, and the other parent pay less
6 than once.

7 MR. ARNOLD: My question then evolves
8 to this: If your presumption is fixed,
9 okay. If your presumption is fixed at a
10 minimum with the possibility of adjusting or
11 deviating, then that model builds in
12 significant litigation and judicial problems.

13 MR. ROGERS: Right. I completely agree
14 with all of your comments. It's not a simple
15 issue. And there's a clear example from
16 yesterday. The Income Shares that Georgia
17 ended up with does not have a parenting-time
18 adjustment at all, even though it started out
19 with one. It was taken out yesterday. And
20 that was because of -- there were a lot of
21 politics involved because it's an election
22 year, but it was clearly the lightning rod of
23 the discussion. But there's no simple

1 answer, and in the end --

2 MR. ARNOLD: Well, if the goal is to
3 create a one size fits all --

4 MR. ROGERS: Well, you don't want a one
5 size fits all. You want a good starting
6 point for all. That's all a guideline can
7 really be. What is the most rational
8 starting point that we believe will cover the
9 most situations.

10 MR. ARNOLD: I understand that's what
11 your statement is. But I think Mr. Bailey
12 will back me up. When he and I argued
13 contrary to each other in front of our
14 Alabama Supreme Court --

15 MR. BAILEY: In '87.

16 MR. ARNOLD: -- in 1987, that it was
17 indeed the philosophy one size fits all
18 because the goal was to take judicial
19 discretion away so that there would be
20 uniformity. Now, it is trending, by this
21 model and others and other opinions, away
22 from the one size fits all to more
23 adjustments, more deviation, more judicial

1 discretion, and logically -- it must
2 follow -- less uniformity building in, again,
3 judicial and litigation problems. All I'm
4 asking you -- I'm not arguing with you. I
5 understand -- I think I understand where
6 you're coming from. I just want to know
7 where your presumptions are in that so I can
8 evaluate what my further study is going to
9 take me and where my eventual discussion and
10 vote on these programs will be. That's all
11 I'm asking. I'm not arguing with you.

12 MR. ROGERS: All right. What I have
13 suggested in my report is the adoption of the
14 Arizona methodology, but I would like to
15 modify my suggestion. I think the Arizona
16 method could be improved by -- well, let me
17 back up. Arizona basically gives the
18 noncustodial parent percentages credited
19 toward the basic award depending on the
20 parenting time, but they're brackets.
21 There's a certain percentage for a bracket
22 number of days, and another bracket for
23 another percentage and so on.

1 What I think would reduce any
2 contention or reduce it significantly would
3 be to put those percentages on a per diem
4 basis. So instead of brackets, you have a
5 percentage for every given day of parenting
6 time. So you're not saying, Oh, I want to
7 get to the next bracket so I want to argue
8 over getting this parenting time. If it's
9 per diem, there are no brackets that you're
10 trying to get to, the next big break, because
11 whatever parenting time you get, if you get a
12 day more or a day less, it's a very small
13 change in the award. So I would recommend
14 the Arizona method but recalculating the
15 percentages so instead of brackets, you've
16 got a number for every single day of
17 parenting time.

18 MS. PALMER: Julie Palmer. As far as
19 that goes, and much to follow up after
20 Mr. Arnold's question, it looks really good
21 on paper and, This is when I'm going to get
22 my child so I have fallen into this bracket,
23 I have him thirty-seven percent of the time.

1 But yet let's say then our clients are
2 supposed to keep up with how ever many days
3 they are actually gotten, and then at the end
4 of the year, is that adjusted? Well, you
5 were supposed to have him thirty-seven
6 percent of the time but you only had him
7 thirty-five percent of the time or thirty
8 percent of the time so, therefore, you owe me
9 X-amount of dollars in child support for the
10 time that you didn't have him this year. Or
11 is that readjusted the next year? I've never
12 been to Arizona, so I don't know.

13 MR. ROGERS: No, I don't believe they
14 do that. I think it's treated as a contempt
15 action and then modification action. There
16 are some ways to address that that I believe
17 came up while Georgia looked at this issue,
18 though they didn't really focus on that. One
19 way is to have a threshold for when the
20 parenting-time adjustments begin. Now, I am
21 generally opposed to thresholds except for
22 this reason, and that's to keep the issue of,
23 Well, did you really exercise all of that

1 parenting time, make that a mostly
2 non-issue.

3 For example, Arizona starts parenting-
4 time adjustments at four days. But it's very
5 small, very small. And then it gets bigger
6 later on because you assume no housing
7 initially. And then later you assume housing
8 plus everything else. But if -- and there
9 are other states, like what Georgia
10 originally considered, then Indiana, and I
11 believe -- I'm not sure about Indiana -- but
12 Oregon, that has a threshold for starting the
13 percentages. And there are two ways of
14 looking at, What if you didn't get a
15 parenting-time adjustment until you had at
16 least -- this is a small number -- what if
17 you had to have forty overnights before you
18 had a parenting-time adjustment.

19 There are two ways of looking at that.
20 One, it assumes the noncustodial parent can
21 care for the child for forty days and not
22 spend any money. Well, I don't know any
23 economic study that says that can happen, so

1 that's a bad assumption from the economics.
2 But on the other hand, it could be
3 interpreted to be the parenting-time
4 adjustment with a forty-day threshold assumes
5 that the noncustodial parent could have to
6 work unexpectedly or go out of town
7 unexpectedly and miss up to forty parenting-
8 time days and it not count against that
9 parent for having missed it.

10 Now, I don't like the economic
11 assumption of, You can care for a child for
12 forty days and not spend any money. That's
13 goofy. But if it reduces litigation to say,
14 We're going to assume a forty-day starting
15 point so it's okay if you miss a few days and
16 then I can't complain about it, that actually
17 has some rationality. But it should be still
18 fairly low because a parent should not be
19 asking for parenting time and a credit unless
20 that time is going to be spent. But if there
21 is this threshold, then there is a built-in,
22 It's okay to miss a few days. And then
23 you're not arguing over it. So from the

1 perspective of building in missed parenting
2 time, a low threshold may make sense, low
3 threshold.

4 It's also raised -- and getting off
5 subject. But there is also the issue of why
6 should one parent even be allowed to consider
7 not being a parent. It's getting way off --
8 a little off target. But it's my personal
9 opinion that a judge should not allow a
10 parent to not be a participating parent, and
11 if one parent chooses that path, I think it's
12 appropriate that the court find a way to take
13 that into account.

14 MS. PALMER: Julie Palmer again. Well,
15 in Alabama, the courts have decided that
16 visitation or custodial time with your child
17 as a noncustodial parent is a moral
18 obligation, not a legal one.

19 MR. ROGERS: I completely agree.

20 MS. PALMER: That's what we're looking
21 at. If a custodial parent keeps the child
22 from visiting the noncustodial parent, they
23 can be put in jail. But if the noncustodial

1 parent doesn't exercise their visitation,
2 then there's nothing. There's no recourse.

3 MR. ROGERS: Well, I think those are
4 long-term issues to consider. I want to move
5 ahead. How do we want to deal with -- this
6 is taking longer than I thought.

7 JUDGE HUGHES: How much longer do you
8 think you are going to take?

9 MR. ROGERS: I can just fast forward
10 and --

11 MS. DAVIS: Let me ask one more
12 question. So far, there's no state that uses
13 the Cost Shares --

14 MR. ROGERS: The full Cost Shares.

15 MS. DAVIS: -- the full Cost Shares
16 that you're recommending. On the parenting
17 time, is there any state that uses what you
18 have recommended here?

19 MR. ROGERS: Certainly. Arizona uses
20 Arizona's method.

21 MS. DAVIS: Is that what you're
22 recommending?

23 MR. ROGERS: I'm recommending -- yes.

1 Other states use variations. Oregon.
2 Indiana has a slightly messy version. But I
3 think an important change should be to make
4 it on a per day basis so you're not fighting
5 to get to the next bracket.

6 MS. DAVIS: Okay. So if I wanted to
7 read, out of the fifty states, which states
8 have parenting time built into -- not a
9 deviation from the guidelines but built into
10 the guidelines?

11 MR. ROGERS: Arizona is one. But I
12 believe Jane's report has a very extensive
13 discussion of that. And I didn't see any
14 need to duplicate that other than I'm not a
15 big fan of the cost-crediting approach, but
16 we can get to that later.

17 MS. DAVIS: So you would recommend
18 reading Arizona law, right?

19 MR. ROGERS: Well, what I'm saying is,
20 Jane's table lists a number of states that
21 you can look at in their report. Question.

22 DR. PATTERSON: I'm not sure I'm
23 understanding. I was thinking that the

1 presumption in your tables is that there is
2 no parenting time.

3 MR. ROGERS: The table has no parenting
4 time --

5 DR. PATTERSON: It's purely an add-on.

6 MR. ROGERS: It's an add-on
7 calculation, separate calculation.

8 DR. PATTERSON: So the answer to
9 Mr. Arnold's question, I guess, is that there
10 is no -- there's a presumption of zero
11 parenting time.

12 MR. ROGERS: There's a presumption of
13 zero parenting time to the noncustodial
14 parent in all four cost schedules, including
15 the current.

16 MR. ARNOLD: Well, that would still
17 support my -- it's fixed. It's fixed at
18 zero. That's okay if it's fixed. What I was
19 worried about is the constant battle over
20 adjusting.

21 DR. PATTERSON: It would be adjusting
22 as a -- would you adjust it as a percentage
23 of time?

1 MR. ARNOLD: Well, I'm not exactly
2 sure. I'm just -- philosophically, the
3 ability to try to adjust and deviate the
4 parenting time is inherently supportive of
5 more and more litigation. It is inherently
6 supportive of one parent or the other trying
7 to either negotiate for or threaten custody
8 or negotiate for more time on paper as an
9 effort to reduce child support.

10 MR. ROGERS: I want to make a --

11 MR. ARNOLD: It becomes a judicial and
12 litigation problem inherently if there is
13 anything but a fixed parenting-time inclusion
14 in the formula.

15 MR. ROGERS: Now, I want to make one
16 comment on that it becomes a fight over
17 reducing child support. Now, assuming the
18 noncustodial parent would actually exercise
19 the parenting time and spend money during
20 that time, one would not make the argument
21 that it's over reducing child support unless
22 one parent believed that it was cheaper to
23 care for the child directly than to pay child

1 support, which means child support exceeds
2 the actual cost.

3 MR. ARNOLD: Don't underestimate the
4 human being's ability to be irrational.

5 MR. ROGERS: I have been in court
6 enough times to recognize that fact. All
7 right. Let's see how fast we can move
8 along. All right.

9 This is illustrative. It basically
10 indicates that there is a significant
11 difference from what is expected as a fair
12 outcome. That's all I'm saying. It
13 indicates, without the parenting-time
14 adjustment or the sharing of the tax offset,
15 there is an outcome that doesn't seem fair if
16 these child costs are incurred in the
17 seventy-five/twenty-five percent proportion.

18 And let me back up. You have those
19 same outcomes even with Cost Shares. Here is
20 Cost Shares. This is without a parenting-
21 time adjustment and without sharing the tax
22 benefits. It's not as large, but you still
23 have the same inequitable outcome without

1 further features in the award calculation.

2 MR. WHITMIRE: Drew Whitmire. I think
3 one of the problems you're not addressing is
4 if a woman or the custodian realizes that the
5 more visitation her child support is going to
6 be reduced, you're not going to have
7 encouraging visitation. It's just flipping
8 it around. So you've got a father saying, I
9 want to visit more, but she realizes, Well,
10 that's going to cost me seventy-five more
11 dollars a month.

12 MR. ROGERS: These are complex issues.
13 And that raises the question of what's the
14 presumption in the custody award, what should
15 be the correct -- and we're getting beyond --
16 what our college professors would say, beyond
17 the scope of the course. But it's related.
18 What is your custody presumption and your
19 parenting-time presumption. But I don't want
20 to go there today.

21 And let's see. All right. Child-
22 related tax benefits, are the tax benefits
23 already taken into account in the basic child

1 support obligation table. Child-related tax
2 benefits include head of household status,
3 earned income tax credits to some degree,
4 though I think the IRS is calling those
5 earned income credits now, child dependency
6 exemptions, child tax credits, and when there
7 is day care, there can be child care tax
8 credits. That's in addition to child tax
9 credits. Hopefully, you've all looked at the
10 Form 1040's enough to know what those are.

11 And does the basic child costs table
12 have child-related tax benefits already taken
13 into account. This has been a learning
14 process for me, and my answer used to be, No,
15 not at all. My answer now is, Almost not at
16 all or mostly not. And we see from Rule 32,
17 there are some statements that give you the
18 impression that the child-related tax
19 benefits have already been taken into
20 account. And there's a comment on tax
21 exemptions: Assumes custodial parent takes
22 the exemptions. And in the PSI report,
23 there's a statement: In converting the cost

1 schedule to gross income, assume the obligor
2 claims one exemption and two for
3 withholding. Basically a single taxpayer
4 status. And they're assuming the custodial
5 parent takes the exemptions.

6 So why do I say that they are not taken
7 into account for the most part? All right.
8 The bottom line is there is confusion between
9 the issue -- all right. The bottom line in
10 developing the Income Shares cost table, it's
11 based on intact family data and it's
12 initially based on child costs expressed as a
13 share of net income. And for simplicity, the
14 child costs are converted from a net income
15 basis to a gross income basis.

16 So Policy Studies takes net income and
17 grosses it up for the cost tables. So
18 there's confusion between the process of
19 grossing up from net income to gross income
20 with the issue of child-related tax benefits
21 being a cost offset. They are two mostly
22 separate issues.

23 And I'm going to jump ahead to this

1 chart here, which comes from one of the
2 Standard Reports. It was scanned and --
3 well, this part was edited, but it's the same
4 language. So the methodology takes spending
5 on children in two-parent households. Then
6 it compares spending on children to total
7 household spending and then takes that share
8 as a percent of net income. So we end up
9 with child costs as a share of net income.
10 So here we are at this point, and we want to
11 express child costs as gross income just for
12 simplicity. So Policy Studies just adjusts
13 up based on the average -- and this is slight
14 over simplification -- based on the average
15 tax rate for a single taxpayer status
16 person.

17 So in this whole process, you're
18 estimating child costs as a part of total
19 spending, then net income and gross income.
20 But nowhere in this chart do you deduct from
21 gross spending. Nowhere do you deduct child-
22 related tax benefits as a rebate or as a cost
23 offset in none of these steps. The only

1 thing that's done is this grossing up, and
2 that's based on single taxpayer status. This
3 grossing up assumes both parents for single
4 taxpayer status. That's basically what it
5 assumes.

6 And I'm going to jump ahead. Let's
7 see. Or do I not want to? No, not going to
8 jump ahead yet. All right. First, I just
9 want to point out, you cannot correctly build
10 in tax benefits as a cost offset. Tax
11 benefits vary by income level. You've got
12 earned income tax credits at the low end, and
13 then the value of the exemptions rise as
14 income rises. And then at some point, they
15 phase out. The cost table is based on
16 combined income. You don't know of the total
17 income -- suppose it's eight thousand
18 dollars. You don't know whether the
19 custodial parent's income is eight thousand
20 or zero or somewhere in between. So you
21 don't know what to calculate for the tax
22 benefits to even adjust the table because you
23 have no idea beforehand what share of

1 combined income is the custodial parent
2 income. So mathematically, you cannot even
3 correctly build it in if you wanted to.
4 Mathematically, it cannot be done correctly.

5 Now, some states do actually come out
6 and make the correct statement. Indiana
7 says: The guidelines do not take into
8 consideration the awarding of the income tax
9 exemption. That is actually the exactly
10 correct statement. And other states actually
11 acknowledge that tax benefits are not taken
12 into account by ordering presumptively that
13 the dependency exemptions be prorated between
14 the parents. Arizona is an example. And it
15 says when the income exceeds a certain level,
16 you allocate the exemptions as closely as
17 possible to the percentages of combined
18 income. They say it differently but that's
19 what it means. Colorado does the same thing,
20 orders an allocation of the exemptions. And
21 my understanding is Policy Studies helped
22 develop Colorado's guidelines in part.

23 Some states actually, instead of

1 prorating the exemption, they actually
2 calculate the value of the child-related tax
3 benefits and then include that in the award
4 formula. Kansas does a formula. A little
5 complex. I don't like it. Idaho, this is a
6 decent approach. They create a table of
7 values for child-related tax benefits based
8 on whether you're single, head of household,
9 or married if you've remarried. So they have
10 a fairly extensive set of tables. So these
11 states have recognized the child-related tax
12 benefits are not taken into account mostly in
13 terms of a rebate or a cost offset.

14 Now, this is my understanding of Policy
15 Studies' position, and there's a grain of
16 truth to it. Policy Studies says that the
17 cost table understates what the child costs
18 are because the net income is assumed to be
19 relative to a single taxpayer. That is
20 true.

21 So then the question is, how much net
22 income is not taken into account. The amount
23 of net income that's not taken into account

1 is the difference between one parent as head
2 of household and one parent as single versus
3 both parents being single. So the difference
4 is the net income that the custodial parent
5 receives as child-related tax benefits.

6 The second question is, if that's the
7 amount that net income is understated, how
8 much is not taken into account. And it's a
9 little bit of a technical detail. All
10 right. First, here is when you calculate
11 child-related tax benefits. And this is more
12 bean counting. I like to do my own formulas
13 in Excel, but I also compare to Turbo Tax for
14 proofing purposes. So these are basically
15 Turbo Tax proofed. So the difference between
16 custodial parent net income with and without
17 the child-related tax benefits, and these are
18 the outcomes. It's based on end-of-the-year
19 IRS taxes which you really pay at the end of
20 the year, and it's nothing more than bean
21 counting. It's Turbo Tax proofed. These are
22 the actual numbers.

23 Then you can do the same thing looking

1 only at the exemption and the related child
2 tax credits. Even here, the tax benefits are
3 sizeable. And when you rotate the child-
4 related tax exemptions, you're basically
5 rotating these values right here even though
6 the total is higher, at least at this end.

7 All right. So if the cost tables
8 exclude the net income of the child-related
9 tax benefits, how much is missed out. Well,
10 basically, Policy Studies is saying, If we
11 did the net income the way it should be, then
12 the custodial parent's share would be
13 higher. So they're offsetting. The only
14 part that is not offsetting is, how much of
15 the net income is not spent on the children.
16 So we can take the cost table and net income
17 and look at the marginal changes in spending
18 on the children out of net income. These are
19 the marginal spending rates. This is very,
20 very heavily smoothed, but the point is
21 correct.

22 So the additional spending on the
23 children actually is very low at the high

1 end. So what this means is, out of child-
2 related tax benefits, somewhere between
3 eighty-eight or so, eighty-eight percent to
4 about forty-eight percent is not taken into
5 account. And so when we applied those
6 reverse percentages to the total child-
7 related tax benefits, these are the amounts
8 that are not taken into account in the cost
9 table.

10 And instead of developing a somewhat
11 complex table, what this suggests is that the
12 approaches taken in Arizona and Colorado are
13 reasonable. Let's alternate the child-
14 dependency exemptions, and that's going to
15 approximate sharing these costs. And if you
16 don't do that, this is a windfall for the
17 custodial parent and helps explain those
18 standard-of-living outcomes that we looked at
19 earlier. Okay. I'm going -- we talked about
20 parenting time, so this is where we're going
21 to kind of skip over.

22 JUDGE HUGHES: It's a good time to
23 stop.

1 MR. ROGERS: All right. Great.

2 JUDGE HUGHES: All right. We're going
3 to break for lunch. We'll try to start back
4 about 1:15.

5 (Whereupon, a lunch recess was
6 had.)

7 JUDGE HUGHES: If you'll go ahead and
8 take a seat, we'll go ahead and get started
9 again. Just before lunch and now after
10 lunch, we have had two more members of our
11 Committee come in. Justice Lyn Stuart is
12 over here and Judge Terri Bozeman Lovell.
13 Steve Arnold has requested, because he has to
14 get back to a hearing this afternoon, to
15 present right quick the proposal on the
16 insurance, medical insurance revision.
17 Steve, if you will go ahead.

18 MR. ARNOLD: Thank you, Judge. When we
19 last met, Justice Stuart and I -- good
20 afternoon, Judge -- were appointed the task
21 of discussing and trying to arrive at a
22 proposal to examine the realities of health
23 insurance costs and their impact on our

1 existing child support guideline program and
2 calculations. A daunting task to try to do
3 to make that balancing act. And with this,
4 Mr. Rogers, I'm very sympathetic on how to
5 try the balancing act, and it's very hard to
6 do.

7 One of the problems being experienced,
8 particularly at the middle to lower income
9 ranges, is the high cost of health insurance
10 or health care costs as a relative percentage
11 of total earnings. There are -- you know,
12 anecdotally, there are examples of wage
13 earners earning two thousand dollars a month,
14 and their health insurance costs are deducted
15 from their pay in terms of three fifty to
16 five hundred, as high as that and some
17 occasionally a bit higher.

18 And the guidelines, first off, that's a
19 big negative impact on a person's individual
20 income and available income. Plus, when you
21 deduct that high amount from the child
22 support, the basic child support obligation
23 after percentage and application, it runs a

1 very high deduction, low cash available to
2 the recipient spouse for child support. It's
3 just been really something with the high cost
4 of health insurance getting out of whack.

5 So I made a stab at -- and Justice
6 Stuart and I made a stab at making some
7 suggestion on a new approach to dependent
8 coverage and health insurance costs. I'm not
9 particularly -- or I'm not totally married to
10 it. We are happy and want to hear any
11 suggestions, any proposals, any criticisms,
12 positive, negative, whatever, because we
13 would hope if there's going to be a change,
14 it would be a good consensus change. It
15 would be a positive development.

16 It is in your materials. It
17 effectively attempts to either define the
18 amount of health insurance premium that is
19 specifically aimed at dependent coverage or,
20 failing the ability to make that
21 determination, to do a pro rata based on
22 number of children actually covered versus
23 children who you are obligated to support.

1 It's there for you to read.

2 Your Honor, I don't know if the purpose
3 of this meeting is educational. That would
4 really be just the background of the theory.
5 And my request would be that people absorb
6 the proposal. If they have comments, we hear
7 comments, whatever the right protocol is for
8 today. And that's all I have.

9 JUDGE HUGHES: The voting process will
10 be part of our next meeting to address all of
11 that. I do have a question in what you've
12 got there. Assuming that either one of --
13 the party required to maintain the insurance
14 has, say, another spouse or -- I know you've
15 put in other children in that, all the
16 children in that. What if another spouse is
17 under that, in the care, too? Would you want
18 to include that spouse just as part of the
19 pro rata share of the total dependent
20 coverage versus the single coverage?

21 MR. ARNOLD: I think it was supposed to
22 be dependent coverage related to and for the
23 minor children, not for a new spouse who is

1 also defined under the policy as a
2 dependent. Quick math, if you had dependent
3 coverage that was ascertained at three
4 hundred dollars for family coverage, three
5 hundred dollars, but you couldn't pinpoint it
6 and you had two children, then the
7 deduction -- and the new dependent spouse,
8 four people covered, one a spouse, two
9 children, you would be looking at basically
10 fifty percent of the cost for purposes of
11 engaging in the calculation. I hope I
12 haven't misstated that.

13 DR. PATTERSON: I guess what you're
14 getting at is, sometimes you just get a
15 premium for family coverage regardless of how
16 many --

17 MR. ARNOLD: Right. And that coverage
18 could be for one child or ten children, and
19 that premium cost would be for one child or
20 ten children. So the premium cost is a
21 deduction from the recipient's share, one way
22 or another, or the payers' share depending on
23 which way it goes. It has an impact. So we

1 were trying to take into account that
2 particular impact. If you play with the
3 formula the way I have presently authored it,
4 it becomes fairly easily ascertainable how to
5 do it and what to do.

6 But I will tell you, I do not have an
7 economics degree. I never got past third
8 grade math. So take shots at it. Throw it
9 out there. And any criticisms or anything
10 anyone wants to call or send or change, let
11 Justice Stuart and I know. We'll be happy to
12 make any reconsideration. I hope this would
13 be a joint effort and ultimately be a
14 consensus piece, or the consensus may be we
15 don't want to change it at all. We'll
16 determine that, too.

17 DR. PATTERSON: Can you help me
18 understand how it does work?

19 MR. ARNOLD: At present?

20 DR. PATTERSON: Yes. What would be the
21 main difference?

22 JUDGE HUGHES: If we could -- after the
23 meeting, we will get a child support

1 guideline form, and I'll show you how it does
2 work. You would have to know the guideline
3 form and figure it into the computation of
4 the guidelines. If you've never seen that
5 done, that would explain how it does work
6 currently.

7 MR. ARNOLD: And that would be the best
8 most illustrious way to see how the impact
9 really is. Then you'd go, Oh, okay. And
10 you'd see the problems that we're faced with
11 with today's health care costs because this
12 is not passing. I know in my office, family
13 coverage for one of our attorneys and their
14 family right now is seven hundred eighty
15 dollars a month. You know, if I were paying
16 child support, that whole seven hundred and
17 eighty would be a deduction on the shared
18 income formula. That's a big hit and should
19 it be.

20 JUDGE HUGHES: Or on the vice versa, it
21 could be figured into what you're going to be
22 paying, too.

23 MR. ARNOLD: Right. Or it could be

1 figured into what I would be paying or
2 receiving. It works both ways. But right
3 now, with the state of our health system,
4 it's becoming more and more of a problem and
5 will continue to grow, in my judgment, in the
6 next decade until Gordon here is successful
7 in getting socialized medicine.

8 MR. WHITMIRE: Not very long I might
9 add.

10 MR. ARNOLD: He's working hard on it.

11 MR. BAILEY: Absolutely.

12 MR. ARNOLD: And that would be the end
13 of my presentation.

14 JUDGE HUGHES: Any of the committee
15 have any questions? Okay. All right.

16 Mark, come on back up. Since we're
17 running short and Jane has asked that she be
18 able to address us no later than 3:00, if you
19 will hold your questions until we complete.
20 And then we can get the -- see what time
21 we've got and get the presentations over with
22 and the response in that. And then we'll ask
23 questions with the time that we have left in

1 that.

2 MR. ROGERS: I'm going to try and
3 finish up in thirty to forty-five minutes,
4 and I understand that Jane probably wanted to
5 catch a flight. But the good news is, it's
6 not at the Atlanta airport.

7 All right. Let's see. We were moving
8 into the parenting-time issue. And we've
9 actually talked about a lot of the key
10 points, and I think we're mainly going to
11 recap that. A key question in terms of how
12 do you rebut the presumption in terms of
13 parenting time, whether you have a parenting
14 time formula in your guidelines -- well,
15 actually, if you don't, then one of the
16 issues for rebuttal is, if the noncustodial
17 parent has parenting time, does that rebut
18 the presumption. And you have to know what
19 the presumption is correctly to even properly
20 address that question. So the bottom line
21 question is, are noncustodial parents
22 incurring child costs for standard parenting
23 time already taken into account in the BCS

1 schedule.

2 Now, this is not a problem with the
3 Policy Studies' report but rather an issue
4 with the commentary in Rule 32, and that
5 commentary gives the impression that it's
6 built in. The standard parenting time -- and
7 I'm not going to read it, but it's in the
8 other assumptions section on visitation
9 saying that it includes customary visitation
10 rights as a part of the schedule. And I
11 think this is one area where Policy Studies
12 and I completely agree where Policy Studies
13 has consistently stated that the Income
14 Shares cost schedule assumes no parenting
15 time for the noncustodial parent. There are
16 other ways of saying it. It's based on
17 intact family data. The children live just
18 with the custodial parent. Same thing.
19 Basically, all of the child costs and the
20 cost tables are assumed to be in one
21 household. There are no built-in parenting-
22 time adjustments. So at a minimum, whether
23 you do a parenting-time adjustment or not, at

1 a minimum, this advisory panel should
2 consider rewriting that assumption so that
3 it's stated correctly, so you know that
4 you're deviating from no parenting time to
5 whatever you think is appropriate to
6 deviate.

7 And I've given a number of citations
8 from Policy Studies and earlier studies by
9 Robert Williams regarding Income Shares. And
10 just to skim through, I do give an example
11 why you cannot mathematically correctly
12 include it in the schedule, and it's like the
13 tax benefit issue. A true parenting-time
14 adjustment is based not just on parenting
15 time but also on the income share of each
16 parent. So you weigh parenting time by the
17 income and have each parent pay the other
18 parent's child costs proportionally.

19 And in this example, there is combined
20 income of ten thousand and, just as an
21 example, child costs of one thousand per
22 month, twenty-five/seventy-five percent time
23 share, and just assume prorating

1 proportionally. And there are two
2 scenarios. What if the custodial parent has
3 seven thousand of the combined ten. And so
4 we prorate that by parenting time and then
5 have each parent pay the other parent
6 according to their income shares. And in the
7 first scenario, the outcome is fifty dollars
8 for an award, and that's because the
9 custodial parent has such high income.

10 Scenario two, we reverse it. Custodial
11 parent has three thousand in income. The
12 noncustodial parent has seven thousand. And
13 when you go through the calculations, the
14 award is four fifty a month. You have the
15 same combined income, the same parenting
16 time. But the relative incomes differ, and
17 the outcomes are four hundred dollars
18 different. Because you don't know the
19 relative income, you cannot build it into the
20 schedule correctly. It's not there based on
21 the underlying studies, and even if you
22 wanted to, you mathematically could not do it
23 correctly.

1 So the bottom line is there is no
2 built-in standard parenting time. You really
3 should consider, first, whether you want a
4 parenting-time adjustment in the formula and,
5 if not, at least correctly state the
6 assumption.

7 And I would recommend the Arizona
8 adjustment. There are some logistical and
9 procedural reasons you might want more of a
10 threshold than four overnights, four days.
11 Maybe forty, something low, so that there's
12 not this issue of, Well, gee, he didn't pick
13 up the kids this weekend because he had to go
14 out of town on work. Economically, it's not
15 a good assumption other than eliminating some
16 of the argument of whether all of the
17 parenting time is fully exercised. And I
18 would put it on a per day calculation, not
19 with brackets.

20 All right. This is a technical issue
21 that Jane and I had a short discussion on,
22 and I think this discussion will continue for
23 some time. And it's related to -- and I'm

1 just going to touch on it. It's a very
2 technical issue. It's related to how the
3 Income Shares cost tables are estimated. And
4 this is -- if you ever have trouble getting
5 to sleep, pull this section out of my
6 report. This will take care of it, no
7 doubt.

8 But the Income Shares methodology is
9 indirect, and part of the reason for that is
10 there are some components where it's hard to
11 separate what's the adult's portion, what's
12 the children's portion. Even when you buy
13 groceries, how much of the loaf of bread did
14 the adults eat and how much did the children
15 eat. Of course, if it's teenagers, most of
16 it went to the children. But, anyway.

17 And over the years, Policy Studies has
18 changed methodologies. The original one was
19 based on work by Thomas Espenshade published
20 in 1984, and then more recently in the early
21 '90's or even starting in the late '80's but
22 used in the early '90's and today, they are
23 based on the economist David Betson with

1 Notre Dame with those methodologies
2 incorporated by Policy Studies.

3 Now, the basic issues related to this,
4 as far as you're concerned, you want a cost
5 table that you believe reflects true child
6 costs. And in the world of economics, there
7 is a lot of uncertainty in terms of
8 statistics and estimation. And when I was at
9 the Federal Reserve and in grad school and
10 all that, the basic idea is, when you're
11 doing economic estimates, you know that there
12 are certain biases in a technique or you
13 believe you know.

14 So the idea generally is -- we want to
15 estimate the price of widgets, whatever it
16 is. We want to estimate something. And you
17 may have one technique that you know, Well,
18 this one estimates from up high and we can --
19 we know that this is the most the price of
20 widgets is or the cost of producing widgets.
21 There might be some other methodology that
22 comes in from the other direction. So you
23 start -- it's very difficult to have what you

1 call a point estimation, you know, this-is-
2 the-exact-dollar-to-the-penny, we-got-it-
3 right estimate. In the world of economics,
4 you really start boxing estimates in.

5 And that's the issue here with these
6 two methodologies called Engel and
7 Rothbarth. Do those methodologies box in
8 where true child costs are. And if so, then
9 you can to some degree feel good if your cost
10 table falls somewhere in between. There is a
11 strong consensus about one of the issues and,
12 I would argue, less certainty about the
13 other.

14 The Engel methodology is what you have
15 now with your current Rule 32. That's what
16 your cost table is based on. And without
17 going into the nitty gritty details, what
18 Engel did, and Rothbarth with a slight
19 difference, basically took different families
20 in terms of different composition with and
21 without children and looked at spending on a
22 particular good that was independent of --
23 well, actually, there are two different

1 ways.

2 Let me go back to Engel. What Engel
3 did was to look at different sized families
4 and look to see how much income needed to be
5 compensated to make the two families equally
6 well off. Say you have two adults in one
7 family, no children, two adults and two
8 children in the other. How much more income
9 does the second family need to be as well off
10 as the family with no children.

11 So his methodology compared changes in
12 household spending on food to look at how
13 well off a family was. If you have children,
14 you spend more money on food. So when you
15 have children, you go from non-food items to
16 more on food items, and you are less well
17 off. So how much more income do you need to
18 spend back on the non-food, more luxury type
19 items to be equally well off.

20 And then Rothbarth did essentially the
21 same thing but did it with adult clothing.
22 What does it take to have the same amount of
23 spending on adult clothing with and without

1 children. And the problem with Engel's
2 methodology was that it assumed that children
3 consume the same proportions on food as
4 non-food items, and of course we know
5 children are food-intensive. And the Engel
6 methodology is recognized as overstating
7 child costs.

8 And I'm going to skip over this. If
9 you have trouble going to sleep, pull this
10 part out right here. All right.

11 And this is in reference to your
12 current guidelines. They're based on the
13 Espenshade methodology, which used Engel.
14 There is -- and the quote is good: There is
15 reason to believe this assumption is invalid;
16 children are probably relatively food-
17 intensive. And basically, if that's the
18 case, then Engel overestimates the true
19 expenditures on children. Then Policy
20 Studies, I believe, recognized this and
21 switched to the Rothbarth Method.

22 And the definition of child costs is:
23 For households of two different sizes, with

1 children being the difference, child costs
2 are the difference in total spending when
3 both households spend the same amount on
4 those adult goods. And there is a chart.

5 And here is the put-you-to-sleep part.
6 And this is taken directly out of the Lewin
7 report, which Jane Venohr provided, and you
8 can find the quotes there. Let's see.
9 Actually, this part -- I mean, the quotes are
10 from two places. This is from Estimates of
11 Expenditures on Children and Child Support
12 Guidelines by Barnow, but the quotes are
13 similar.

14 And it basically has to do with the
15 issue of adults when they have children
16 basically -- let me back up. The statistical
17 issue is you're trying to look at comparable
18 numbers for equal well-being, and how do you
19 spend on, for example, adult clothing. But
20 when you have children, it basically changes
21 how you view spending on those goods or
22 actually on shared goods. You would spend
23 not just on adult goods but also on shared

1 goods, such as the TV, living room, other
2 things that are shared such as vacations.

3 And the issue as stated -- and I'm just
4 quoting or paraphrasing. The issue is when
5 you have children, the adults decide that
6 they don't like the shared goods as much
7 because, well, they're not just sharing them
8 with the adult, they're sharing them with the
9 children and, Gee, I think I'll spend more on
10 the adult goods instead. And because of this
11 change in preferences, it's easier to get
12 back to the adult spending level before you
13 had children. That's the alleged reason that
14 the Rothbarth methodology understates child
15 costs because of this shifting it away from
16 shared goods to adult goods, and in Barnow,
17 this is what's called the selfishness. And
18 Jane and I disagree on the meaning of that.

19 And based on this commentary, the
20 required assumption is that the adults must
21 behave in a selfish manner to make the
22 assumption that Rothbarth underestimates
23 child costs. I don't think that's a

1 legitimate assumption. What if adults like
2 spending time with their children? What if
3 adults like watching videos with their
4 children on Friday night or Saturday night?

5 And this is a quote directly from the
6 Barnow quote: There is, of course, the
7 possibility that adults behave selflessly,
8 and the substitution mechanism works in the
9 opposite manner of that which is outlined
10 here. In this case, the validity of all the
11 estimation procedures discussed here is
12 called into question. That's a very
13 technical quote. But the key phrase here is
14 opposite manner. What this means is, instead
15 of underestimating child costs, Rothbarth may
16 actually have overestimated child costs.

17 Why do we care? Basically, this is an
18 issue of whether this commission or anyone
19 else can consider a child costs methodology
20 that results in a cost table below
21 Rothbarth. Policy Studies -- and I believe
22 this is their position -- that no
23 economically sound cost table can fall below

1 Rothbarth. And I'm just going to come out
2 and say, I think that's -- that could be
3 considered self-serving. But looking at the
4 underlying assumption, this opens the door,
5 based on the people who did this research,
6 that the true child costs may actually lie
7 below Rothbarth. And that's now what is the
8 standard Policy Studies -- it's not every
9 cost table, but it's their standard cost
10 table. I believe that's correct. So the key
11 point here is, looking at what's really going
12 on in this theoretical analysis, it is
13 possible the true child costs can be below
14 Rothbarth. That's all it means.

15 And the summary of that is, it's
16 generally recognized that Engel, which your
17 current guidelines are based on,
18 overestimates child costs. That's generally
19 recognized. Now, my reading of the Rothbarth
20 methodology is that in order to claim that
21 anything -- in order to claim that Rothbarth
22 understates child costs -- we didn't talk
23 about all of this -- you have to assume

1 parents do not like sharing shared household
2 goods with their children and, number two,
3 parents get no sense of well-being from their
4 children. I don't think these are good
5 assumptions, and I don't think they hold
6 true.

7 So while it's reasonable to say Engel
8 is too high, I don't think there is validity
9 to the claim that Rothbarth is too low. And
10 I think we'll have further discussion on
11 that. And I think we can go through some of
12 these other items fairly quickly.

13 Policy Studies -- and I largely agree,
14 that to have a truly effective self-support
15 calculation, you need more than just having
16 it built into the table as is. You need a
17 second step that takes into account, when the
18 custodial parent has income, that can force
19 the award -- because of the steepness of the
20 curve in the self-support section, that can
21 force the awards higher so the noncustodial
22 parent ends up below the poverty level. So
23 you need an extra step.

1 There are two different ways of doing
2 this. I think the method I suggested is
3 probably a little easier to follow, but the
4 other method is fine, too. This is just a
5 numerical example. When you have two
6 children with the obligor at twelve hundred,
7 the custodial parent has no income, and the
8 shaded self-support area in the cost table,
9 that's where you make a calculation, number
10 one, assuming where the custodial parent has
11 no income. And net income is ten twenty.
12 The presumptive award is two forty-eight. It
13 leaves seven seventy-two per month after
14 taxes based on the poverty threshold used at
15 the time -- and this is from the Policy
16 Studies 2004 recommendation -- of seven
17 forty-eight a month in their calculations.
18 So this leaves the obligor with a small
19 amount of money above the poverty level for
20 himself.

21 Now, if we add the custodial parent in
22 having five hundred in gross income, then we
23 make the calculation on combined income and

1 shares. The award is pushed up to three
2 fifty because the curve is so steep at this
3 point, it's an artificial calculation. That
4 leaves the obligor with six seventy a month,
5 and that's below the poverty level. So to
6 ensure the obligor is not pushed below the
7 poverty level, you need to add a calculation
8 compared to what you have now. It is very
9 important. And one method is to take the
10 lesser of the two calculations. You do not
11 have the obligor-only calculation currently.

12 Now, a question came up. What about
13 the custodial parent? You can do the other
14 methodology, which is fine. This one is a
15 little simpler. But in terms of, Is the
16 custodial parent taken care of, well, there
17 are two answers to that.

18 One, the custodial parent generally has
19 means-tested benefits not available to the
20 noncustodial parent. Sometimes housing,
21 subsidies, more food stamps. There is also
22 the tax benefits. But also -- actually, I'm
23 jumping ahead. There is WIC, TANF. But

1 also, even if this didn't occur, what do you
2 gain by having an award that pushes the
3 obligor below the poverty level? Most
4 likely, instead of increasing the actual cash
5 going to the custodial parents, you're just
6 increasing arrearages. You can always order
7 more money, but it doesn't mean it gets
8 paid. So without that calculation, you're
9 probably increasing arrearages and just
10 creating more problems for the courts that
11 shouldn't have been created in the first
12 place.

13 Day care, this is not controversial I
14 don't think. There are sizeable child-
15 related tax credits for child care expenses.
16 It's true some custodial parents don't have
17 enough income to qualify for them. But not
18 taking them into account means the
19 noncustodial parent pays twice toward those
20 costs, whereas the custodial parent gets the
21 benefit from the government of partially
22 paying. The benefits are quite sizeable or
23 can be. I have a typo. I hate typos. Could

1 be up to three thousand for one child and up
2 to six thousand for two. And it's the lesser
3 of actual and up to the ceiling. Now, so
4 it's the lesser of actual and the ceiling.

5 And this is from IRS Form 2441. And
6 you get credit by percentages of the total
7 child care costs, and it varies by income.
8 And the government essentially pays anywhere
9 from twenty to thirty-five percent of child
10 care costs within the ceiling. And some
11 states do build in an adjustment to gross day
12 care costs presumptively.

13 In North Carolina -- I mean, there may
14 be some marginally better, but North
15 Carolina's is about as good as it gets in
16 terms of being economically fair and a quick
17 approximation to this whole table. And
18 basically, North Carolina sets a threshold
19 according to the number of children. Here is
20 the key point. With each child, the
21 custodial parent gets other tax benefits that
22 preclude the child care tax credits. So if
23 you don't have enough income to go beyond the

1 tax benefits already incurred, then it means
2 nothing to you, to that parent. So you have
3 to have these thresholds, and the thresholds
4 get higher the more children you have because
5 you have other exemptions for those
6 children.

7 So North Carolina says the custodial
8 parent can claim only seventy-five percent of
9 actual costs once that threshold is met. And
10 here is just a quote from North Carolina's
11 child support guidelines. May be a better
12 one somewhere else, but it's not going to be
13 better by much. And basically, it says, if
14 income is less than these thresholds,
15 presumptively include one hundred percent of
16 the child care costs if the custodial
17 parent. And this only applies to the
18 custodial parent. Only the custodial parent
19 qualifies for child-care tax credits. If the
20 income is above these thresholds, then you
21 include only seventy-five percent of the
22 costs. I think this is something you should
23 consider so as to take into account actual

1 net child care costs.

2 And in summary, I think the revisions
3 to the guidelines should -- first of all, I
4 think it's important to look at the
5 guidelines as a legal presumption. And
6 there's a tendency to think of guidelines as
7 a policy choice. I think not looking at it
8 as exactly a legal presumption leads to
9 problems in terms of equity and whether the
10 guidelines are workable and end up with the
11 outcomes that you want for the short run and
12 the long run.

13 And, of course, you would include equal
14 duty of support. That would include the
15 concepts of child-related tax benefits as
16 offsets and parenting-time adjustments so
17 that the children are effectively supported
18 in both households by both parents.

19 You need up-to-date child costs, and
20 Alabama is lagging behind on being up to
21 date. And it should reflect the fact that
22 households are no longer intact. The parents
23 do not have ability to pay as if they were

1 living in one household.

2 And so I would recommend either the
3 Income Shares cost schedule adjusted for
4 second household cost or the Cost Shares
5 schedule. Improve the self-support
6 calculation with the two-calculation
7 process. For the tax benefits, either
8 prorate the exemptions according to shares of
9 adjusted gross income like Arizona and
10 Colorado do.

11 I would recommend the Arizona
12 parenting-time adjustments but with the
13 caveat that you convert it to per day instead
14 of using brackets. And it might actually be
15 reasonable, instead of starting with four
16 days, something slightly higher, thirty,
17 maybe forty, to preclude the issue of, Gee,
18 did you use all of your visitation or not.
19 Then change the medical expenses assumption
20 to two fifty per child per year and include
21 the child care tax credits.

22 And as kind of a final comment -- I've
23 covered a lot of this. I really think in the

1 long run, you also need to consider, number
2 one, using alimony more frequently when
3 appropriate. I think there is the urge to
4 use child support for a standard-of-living
5 adjustment that is properly considered using
6 alimony. At least one state has advisory
7 alimony guidelines. That's Arizona. And, in
8 fact, I've actually begun consulting in high
9 income cases for the sole purpose of getting
10 alimony appropriate for the custodial
11 parent. So I think in the long term, it will
12 be easier to have child support guidelines
13 based on actual cost when you have alimony
14 awards that are more frequent when
15 appropriate. So I strongly recommend
16 reinvigorating alimony, which would reward
17 loyalty to a marriage rather than simply
18 having children. And I think in the long
19 term, that's a good policy. And I'm going to
20 stop there for now.

21 JUDGE HUGHES: Jane.

22 DR. VENOHR: I want to sit right here
23 because last time, I guess I spoke too fast.

1 And so we agreed that she gets to look at me
2 and warn me if I start doing that.

3 And the first thing I want to say is,
4 thank you very much, the committee, for
5 giving us an opportunity at PSI to make a
6 response to Mark Rogers' report. And I also
7 want to thank Mr. Rogers. I mean, it's very
8 gracious the comments that you made earlier,
9 and I appreciate that. We have a good
10 relationship. I can't say that all the time
11 about my foes on the other end at University
12 of Arizona, but we won't go there.

13 But what I want to do today -- I
14 promise, as long as -- if I speak in my
15 normal tone, I think I can do this in twenty
16 minutes, but we'll see if that's a little too
17 fast.

18 What I want to do is walk you through
19 this table. And before I do it -- I don't
20 want to give you guys a lot of numbers. I
21 think you've been listening to numbers all
22 day. But I have to give you one number, just
23 one number that I want you to keep in mind

1 when you're evaluating what to do. And that
2 number is sixteen thousand dollars a year.
3 And the reason that sixteen thousand dollars
4 a year is so important is that's the median
5 income of single-parent families -- female
6 heads of single-parent families in the State
7 of Alabama. Sixteen thousand dollars a
8 year.

9 That means that fifty percent of those
10 single-parent families have income less than
11 sixteen thousand dollars a year, and fifty
12 percent have more than sixteen thousand
13 dollars a year. And I'm going to tell you
14 why I think that's so important in a minute.
15 If you forget that statistic, it's in this
16 letter. It's based on 2004 census data. And
17 I want to say that that's female head of
18 households, and there's about a hundred and
19 fifty-eight thousand female head of
20 households in Alabama.

21 There's also a lot of single-parent
22 male head of households in Alabama that are
23 raising their children. There is about

1 twenty-eight thousand of them. Their median
2 family income is thirty thousand.

3 So among those female head of
4 households in Alabama, forty-six percent of
5 them have poverty incomes. Forty-six
6 percent. Among the male single-parent family
7 households, about twenty percent of them have
8 poverty income.

9 And the reason that I think this is so
10 important is my biggest concern, of all the
11 things that Mr. Rogers said today that I feel
12 like might get lost is the whole issue on
13 what to do with the tax credits, the child-
14 related tax credits. And at sixteen thousand
15 dollars a year, I can guarantee you that
16 those families are not eligible for the child
17 tax credit or the child care tax credit.

18 Those are credits. They come off of the tax
19 liability. So think about that if you're
20 doing any sort of policies regarding that.

21 And another issue that I want to talk
22 to you about on that is -- and Mr. Rogers and
23 I also argued about this. I don't know if

1 you remember. We did this a few years ago.
2 About the earned income tax credit. Most of
3 these families are receiving the earned
4 income tax credit. The earned income tax
5 credit goes up to about thirty thousand
6 dollars a year is when it phases out. And I
7 know when -- in your analysis when you are
8 doing the comparisons, did you include the
9 EITC? Yeah, usually, you do.

10 And as a public policy perspective, I
11 think it's a bad idea to include the earned
12 income tax credit in that analysis and to
13 include it and code it as income in child
14 support. And the reason being is that it
15 negates the purpose of the earned income tax
16 credit.

17 The purpose of the earned income tax
18 credit is to get people in the workforce,
19 those single parents in the workforce. And
20 it has been very successful at that. We
21 have -- back in the 70's, about fifty percent
22 of women with children were working. Now
23 that percentage is over seventy percent.

1 Earned income tax credit has been attributed
2 with major reductions in poverty. I don't
3 think that should be negated. And also the
4 research tell us that it's work and child
5 support that helps these families get out of
6 poverty. So I know I'm getting a little
7 sidetracked from this table, but I just want
8 to emphasize that.

9 And the two other things I want to tell
10 you about the research findings before I get
11 into this table are, one, that the research
12 indicates that child support does decrease
13 divorce. There is an article by Lucia Nixon
14 in the Journal of Human Resources that finds
15 that. And, two, child support does reduce
16 poverty. And there is lots of articles on
17 that. Or -- I'm sorry. Child support does
18 reduce poverty. It also reduces non-marital
19 births, which is an important policy goal
20 overall in our country. And there's research
21 by Irv Garfinkel, a couple of others. Irv
22 Garfinkel is out of Columbia University.

23 So now I want to walk you through this

1 table. This is this little gray-purple
2 table. And what I did was I took the agenda
3 items or proposed agenda items from Judge
4 Hughes' memo, recommended topics, and I took
5 the ones that PSI and Mr. Rogers addressed.
6 And I took his recommendation, our
7 recommendations, did some commentary and then
8 looked at how other states treat the issue
9 and then whether -- what was the impact on
10 the order now.

11 And this table contains eight issues.
12 And, surprisingly, when you flip through it,
13 Mr. Rogers and I agree on five issues. And
14 of those five issues that we agree on, three
15 of them result in decreases to support
16 obligations. You'll see that in the last
17 column.

18 The one issue that we agree on that
19 could result in increases or decreases is we
20 both agree that the schedule needs to be
21 updated. And we agree on that because it's
22 old. It's based on data that was -- it was
23 based on Espenshade estimates, which he

1 developed in 1986. And that's based on
2 expenditures data that was collected in
3 '72-73. So we agree that the schedule needs
4 to be updated. We just disagree as far as
5 what the schedule should be. Okay.

6 And the last -- the fifth issue that we
7 agree on is that we both agree that the
8 schedule should include ordinary medical
9 expenses of two fifty per year per child.
10 And that has the effect -- this is the only
11 one that has the effect of increasing order
12 amounts but by a negligible amount. I mean,
13 two hundred dollars per year for a family of
14 four, and now we're talking two fifty per
15 year per child. It's not the biggest
16 factor.

17 So with that said, that's an overview.
18 There are eight issues here, and we agree on
19 five of them. I want to go through these
20 issues one by one.

21 The first issue -- and this is right
22 from the agenda: A., Do we wish to continue
23 to use the Income Shares model? If not,

1 which model? PSI's position, we don't care.
2 This is a state decision. We are technical
3 consultants. Yes, the president of PSI -- or
4 he's got a different job title now -- he
5 developed the Income Shares model, but we
6 don't care. That's your state decision.

7 Mark Rogers' recommendation -- and this
8 is based on page 6 of his report -- is Cost
9 Shares or adjusted Income Shares. We do,
10 however, recommend that states always make an
11 informed decision. And the information that
12 we think you should consider is that
13 Minnesota and Georgia both had legislative
14 bills proposed to do Cost Shares in the last
15 few years. They were not passed. Instead,
16 both of those states adopted Income Shares.
17 And you can talk to Seth Harp. He's a
18 Senator in Columbus, Georgia. You can talk
19 to him as to why. You could talk to the
20 Georgia Guidelines Commission. I mean,
21 that's something you can do on your own. You
22 don't need me.

23 The second bullet here shows that the

1 National Child Support Project, the
2 Guidelines Panel, they recommended either the
3 Income Share or the Melson formula. Bob
4 Williams was the principal investigator to
5 that project. There seems to be a lot of
6 misperceptions as far as the link there.

7 And the final point is that there is a
8 Family Law Quarterly article, a recent one.
9 And it's in your packet, and I encourage you
10 to read it. It's written by Professor Jo
11 Beld. She's a Poli-Sci professor at
12 St. Olaf. And her co-author is Biernat, and
13 he is a law professor. And they compare the
14 Cost Shares, the Income Shares, and the
15 Melson. And they still concluded that states
16 should adopt either the Income Shares or the
17 Melson formula.

18 MR. BAILEY: Jane, could I ask a
19 question?

20 DR. VENOHR: Yes.

21 MR. BAILEY: Gordon Bailey. When we
22 adopted the Income Shares approach in '87,
23 that was the American Bar Association

1 recommended child support guideline model.
2 Is that still the same, or have they made a
3 recommendation --

4 DR. VENOHR: I don't know what the Bar
5 recommends these days. The American Legal
6 Institute, which is the professor that I was
7 talking about earlier at the University of
8 Arizona, they have their own model. And
9 that's a lot -- Income Shares is in between
10 the Cost Shares and the ALI model.

11 MR. BAILEY: Right. But it's still the
12 prevailing. I think you said thirty-four
13 states still have it?

14 DR. VENOHR: Yes. And once Georgia --
15 Georgia and Minnesota adopted legislation
16 last year. Minnesota's legislation will take
17 effect in 2007, and then Georgia's is
18 supposed to take effect in July of 2006. So
19 it would be thirty-six states.

20 So question B.: Do we wish to have our
21 child support calculation by the trial courts
22 based on gross income or net income? And I'm
23 not going to repeat what Mr. Rogers said

1 about the simplification of the tax
2 assumptions. All I'm going to say is that we
3 run several thousand comparisons when we take
4 our tables that are based on gross income.

5 He did explain it right that we start
6 with net income, and we gross it up. If we
7 were to develop a net income and use the
8 parent's actual tax consequences, we find,
9 when we do these simulations, that it comes
10 out pretty much the same. In fact, the way
11 that we do it favors the noncustodial parent
12 somewhat. And I would be happy to provide
13 you with the net income schedule for free. I
14 can do that very quickly, if you would like,
15 because I already have it developed.

16 The second issue that I want to say
17 with the taxes, I wrote up -- and you can
18 read this at your leisure. It's very simple
19 the way it's written as far as the advantages
20 and disadvantages of net and gross income.
21 But I do want to say, an important difference
22 between the way Mr. Rogers does it and PSI
23 when we do tax stuff, is you use the 1040

1 year-end. We use the employer withholding
2 formula. And that employer withholding
3 formula is different than the 1040. The
4 child tax credit is not advanced. Only part
5 of the EITC tax credit is advanced. About a
6 third to half of it is advanced. The child
7 care tax credit is not advanced.

8 In this formula, single taxpayers and
9 head-of-household taxpayers have exactly the
10 same formula. The results of the standard-
11 of-living comparison will look a lot
12 different if you use this guide. And the
13 reason that we use this guide is because most
14 of our families that are affected by child
15 support live paycheck to paycheck. Again,
16 that's sixteen thousand dollars a year. They
17 don't have time to wait until the year-end
18 for that child tax credit or the full EITC.
19 Okay? So that is one other thing that I
20 really want to emphasize and have you take
21 home.

22 If you were to do anything with the tax
23 credit, I would probably recommend doing some

1 sort of deviation factor, maybe something
2 like Indiana, Arizona, or Colorado, but I
3 would not recommend doing an offset. Okay?
4 And it's mainly because of all that stuff I
5 have just showed you.

6 Going on to C., which is the big one:
7 Do we agree with the child support obligation
8 dollar amount, blah, blah, blah, blah, blah.
9 Not to -- I'm not trying to paraphrase you as
10 blah, blah, blah, but so forth. PSI's
11 recommendation, of course, is to update the
12 schedule using the schedule that we
13 prepared.

14 And I do want to tell you a caveat to
15 that is that Dr. Betson, who we work closely
16 with, has just developed new estimates of
17 child-rearing expenditures. I was in Oregon
18 last week showing them for the first time.
19 And they use data up to 2004. The schedule
20 in our report only uses data up to 1998, and
21 that was all that was available at that time
22 that we had readily at our fingertips.

23 And if I was to do a schedule today,

1 redo a schedule, if I could just have all the
2 unlimited resources and money of today, I
3 would take this and do the same methodology.
4 I would use that new data, which is based all
5 the way up to 2004, and that schedule would
6 be even more than what you see in our
7 report. It would be more for two, three,
8 four, five, six children, and it would be
9 more at higher incomes. It's slightly less
10 for one child. I don't know why, but that's
11 the way the results are.

12 The second thing I want to say about
13 why we choose that schedule or why we -- the
14 Income Shares -- I shouldn't say -- I think
15 it's a policy decision. And I'm not getting
16 into this. I think Mr. Roger's pointing on
17 the presumption and policy is different than
18 the terms I'm using to describe it. I feel
19 that we should just provide technical advice
20 and tell you where there's a policy
21 decision. And the policy decision is what
22 guidelines to use.

23 And if you used Income Shares, it's

1 based on expenditures in an intact family.
2 We don't use -- and that Income Shares model
3 does not use expenditures in single-parent
4 families because the premise is, a child is
5 entitled to the same amount of expenditures
6 they would have received had the parents
7 lived together. And the reason being is that
8 there should not be a star or a signal on the
9 child's head that says, I'm a child of a
10 disrupted family. That's the whole premise
11 of it.

12 And we don't use single-parent family
13 expenditures. Most single-parent families do
14 live in poverty, as I demonstrated earlier,
15 the statistics. In fact, if you look at the
16 USDA report, which is also in your packet, on
17 the last page is the USDA's table. If you
18 look at the income brackets here that they
19 consider, eighty-three percent of the
20 families fell into this first income bracket,
21 which has an average income of seventeen
22 thousand five hundred dollars per year. The
23 remaining fall in the second income bracket,

1 and that's an average income of sixty-three
2 thousand dollars a year. So there's a lot of
3 extrapolation to get at a high income
4 schedule.

5 So the third thing I want to say about
6 this issue C., it pertains to the third
7 bullet. And Mr. Rogers did a second-family
8 adjustment. And according to what I
9 understand or what's in the minutes from the
10 2004 meeting on pages 207-226 of the minutes
11 of the March 2004 meeting, Mr. Rogers viewed
12 this adjustment as an alternative for the way
13 that PSI realigned these national estimates
14 for Alabama's lower cost of living. But what
15 has happened is, when Mr. Rogers adjusted
16 PSI's schedule, his adjustment is on top of
17 that other adjustment. So when he presented
18 it back in March 2004, he presented it as an
19 alternative. But now what we see is that
20 adjustment on top of an adjustment, and the
21 impact is that it further lowers the
22 schedule.

23 Moving on to the next page, on page 2,

1 is that another concern that I have with this
2 adjustment is -- I should back up and explain
3 this a little better. PSI took national --
4 estimates of child-rearing expenditures
5 that's based on national data, specifically
6 the Consumer Expenditure Survey because
7 that's the best data out there. There's not
8 Alabama-specific data comparable to it. So
9 we took that data. We recognized that
10 Alabama has lower incomes than the national
11 average. So what we did was we looked at the
12 income distribution of Alabamians compared
13 that to that of the national U. S. And if we
14 saw that five percent of the Alabama folks
15 had incomes of ten thousand dollars or less
16 and only one percent of the national families
17 had that, we realigned it. So we could -- we
18 essentially brought the Alabama schedule down
19 by doing that method. We did that method
20 back in 1993, too.

21 And there is a report -- and I
22 apologize. I thought you guys had this. But
23 I talked to Mr. Maddox and you guys don't,

1 but he has copies of it. There is a report
2 done by Dr. John Formby, who was -- I
3 understand he's retired now, but he was with
4 the Center of Business and Economic Research,
5 College of Commerce and Business
6 Administration, University of Alabama. And
7 he evaluated our schedule back then. We used
8 the same methodology that we used in our 2004
9 report, and he was highly critical of that
10 method that we used for the realignment. He
11 thought it overcompensated for Alabama's low
12 income. He says that a more appropriate
13 ratio would have been ninety percent, that it
14 costs about ninety percent of what the U. S.
15 average was. We used something like seventy-
16 six percent. So essentially he argues that
17 we took the schedule too far down, though
18 Alabama didn't adopt it.

19 Another thing that he argues in this
20 paper is that we shouldn't have used the
21 Rothbarth estimate. And it is known in
22 economics, in traditional and classical
23 economics, there's math proofs that show that

1 the Rothbarth estimator understates actual
2 child-rearing costs. It is not PSI that's
3 saying that. It is economists that are
4 saying it.

5 And it is in that Lewin report. The
6 Lewin report is not a PSI report. It is a
7 report commissioned by the Department of
8 Health and Human Services, and they say that
9 the Rothbarth estimate is the lower amount.
10 And there's also a paper that I reference in
11 the letter. It's a math proof. The
12 Rothbarth is the lower amount.

13 PSI does not tell states to use the
14 Rothbarth or the Engel or the USDA. In fact,
15 I helped Ohio develop a schedule based on the
16 USDA. I helped Georgia develop a schedule
17 based on the average of the Rothbarth and the
18 Engel estimator. When a state wants us to
19 make the decision, we will go with the
20 Rothbarth because technically it is the best
21 and the most economically sound based on the
22 literature.

23 So I bring this up also because to me,

1 I like to juxtapose this paper to what I hear
2 or what the rumors are being spread around
3 the internet. This paper says that PSI
4 developed a schedule that is too low. What
5 the rumors are on the internet is that PSI
6 developed schedules that are too high because
7 they are interested in increasing child
8 support for child support collections
9 purposes. That is untrue. PSI does not run
10 child support offices in Alabama. PSI is not
11 a private child support collections agency.
12 PSI's objective is to be the premier vendor
13 for department and health and human agencies
14 at the federal, state, county level. If
15 government is interested in child support, we
16 will contract at every single level
17 involved. We will not do it privately. And
18 when we consult states on child support
19 guidelines, we're basing it on twenty years
20 of experience in discussions with states and
21 academic research.

22 Me, I have seventeen years of
23 experience in this field. I started when I

1 was in graduate school, and I started with my
2 Ph.D. in Economics. I worked with some of
3 the best economists in the country on this
4 issue.

5 So with that said, I want to return
6 back to this matrix. I want to focus on
7 these two bullets right here. And what those
8 two bullets just go back to -- this is the
9 issue of what's the guidelines model -- whose
10 needs come first, the children's or the
11 parents. And that is something for the State
12 of Alabama to decide.

13 The last bullet on this page, the point
14 of that is when Mr. Rogers does the second
15 family adjustment, I have to tell you a
16 little concern that I had, a little
17 technicality -- and, you know, we might have
18 to talk about this some more because I'm not
19 sure what those IRS data are that you are
20 using -- is that when we developed those
21 estimates for child-rearing costs or when
22 Betson does them using the Rothbarth
23 methodology, it does not include mortgage

1 principal payments in the housing costs.
2 Housing expenses only include rent for those
3 that rent. For those that own their own
4 home, it only includes interest, mortgage
5 interest. It includes electricity. It
6 includes, like, household furnishings.
7 That's true of all these estimates of child-
8 rearing costs. The Engel-Espenshade, the
9 Betson-Rothbarth, the USDA. They do not
10 include mortgage principal payments.

11 And just when you're doing anything
12 with housing, I want you to keep that in the
13 back of your head if you're playing with any
14 sort of statistics. And the reason that they
15 don't include it is that this is a Consumer
16 Expenditure Survey which focuses on measuring
17 current consumption, and that consumption is
18 what we consume currently. And so we can
19 sell our houses later. When the child
20 emancipates, the house can be sold, and then
21 there is a property thing. So that property
22 settlement is separate.

23 So I'm moving on to page 3. I'm going

1 to issue D., and this has to do with the
2 self-support reserve or the low-income
3 calculation. The current Alabama schedule
4 includes a self-support reserve of four
5 hundred and forty-seven dollars per month.
6 And in our report that we did in 2004, we
7 incorporated a self-support reserve of seven
8 hundred and forty-eight dollars per month.
9 And we agree with Mr. Rogers that it's a good
10 idea to have a low-income adjustment and to
11 update it. What vehicle you use is really up
12 to you. I mean, there's all sorts of
13 advantages and disadvantages, and I also now
14 wonder whether that seven hundred and forty-
15 eight dollars is too much. I mean, I just
16 started really looking at the census data,
17 looking at income in Alabama, and it is low.
18 And I'm wondering if seven hundred forty-
19 eight dollars might be too high of a self-
20 support reserve. But we do agree that four
21 hundred and forty-seven is probably too low,
22 and that needs to be adjusted.

23 And there's a whole bunch of literature

1 out there that says that noncustodial parents
2 that are the parties or partners to the
3 custodial parent's public assistance and
4 former public assistance cases are just as
5 poor as their custodial parent counterparts.
6 So there is a belief that child support
7 should not further impoverish, and the best
8 thing that can be done is to maybe have jobs
9 programs, help these folks get on their feet
10 so both parents can economically support
11 their children. But it will result in
12 decreases at the low end of the schedule.

13 E., Mr. Rogers talked a lot about the
14 shared parenting-time adjustment, and we
15 agree. Policy Studies believes that it's
16 important to have a formula because shared
17 parenting is a reality. There is more
18 families today where both mom and dad are
19 raising the child. So we strongly believe
20 that there should be a formula. If you don't
21 have a formula, it becomes at court
22 discretion. Courts might practice it
23 differently, and there needs to be a formula

1 to increase the predictablity of the
2 outcome.

3 What formula you adopt, it doesn't --
4 you know, at one time we used to recommend
5 the Arizona adjustment. As I said, I was in
6 Oregon last week. It is not working well
7 there. They're finding that there is a lot
8 of bargaining between the parents for time
9 and money. And I think it's really
10 unfortunate. I mean, one of the things that
11 I hope to do in the next year is to raise the
12 money to do some further research on this
13 issue that's going on. It's very
14 disappointing to see what's happening.

15 And I should explain. I think there's
16 a correlation between what the visitation
17 guidelines are in a state or the presumption
18 is on parenting time and the child support
19 guidelines. In Arizona, I have talked to
20 them several times about it, and they say
21 that their visitation adjustment works very
22 well. And Arizona is one of those states
23 that starts at four overnights. And one of

1 the reasons that it works well in Arizona, I
2 think, is that they have an infrastructure to
3 support it. They have had -- they have
4 parenting plans, model parenting plans that
5 parents follow. They have expedited
6 visitation services so, if visitation isn't
7 granted, there's a place to call. They have
8 mediation. All parents are required to
9 attend parenting education so they keep in
10 mind that the purpose is to have their best
11 interest of the children at heart and so
12 forth. So it's worked well in Arizona.

13 One of the problems I think that might
14 be occurring in Oregon but I'm still trying
15 to work with them to figure out what it is,
16 is that Oregon just recently adopted some
17 state statute or it might be a court rule
18 that says all parents are supposed to have a
19 parenting plan. But they don't give any
20 guidance as far as what that amount of
21 visitation should be. So parents -- they
22 have people there at the courts to help them
23 sort it out, but it's just -- they don't --

1 there's not a lot of mediation. There's not
2 a lot of guidance.

3 And everybody knows that -- what I was
4 told when I was out there last week is that
5 everybody knows that you can get a decrease
6 to the support order if you get above the
7 twenty percent time-sharing threshold, so
8 they'll all fight for that. It gets into the
9 parenting plan. They base the support on
10 that amount. And then what happens --
11 everybody on the committee shook their head
12 at this when I asked them if it really
13 happened -- is that the noncustodial parent
14 isn't visiting up to the amount that's
15 stated. And I'm very, very concerned about
16 that. I mean, I think it's a really good
17 idea to promote shared-parenting time. I
18 think both parents -- all of the literature
19 shows that it's good for the child to have
20 both parents and that there should be an
21 adjustment in the guidelines also to account
22 for that. But we're not there. We need more
23 research. And, again, I'm hoping to write up

1 some stuff, and I'm looking for funding to
2 help us put our finger on that issue.

3 And on that respect, I think that four
4 overnights is too low. And another reason
5 that I think four overnights is too low is if
6 you take the Arizona adjustment, it ends up
7 being more than what I get paid per diem
8 based on federal per diem rates for food, you
9 know, which I think our rates are, like,
10 thirty-seven, thirty-eight, thirty-nine
11 dollars per day for food as the federal
12 government. And when you use that formula,
13 the Arizona formula, it's more than that. So
14 that's bothersome to me.

15 Although Mr. Rogers and I agree that
16 there should be a shared parenting-time
17 formula, I think the cross credit is the way
18 to go. It's probably the most sound, and
19 it's been in use since 1984. Colorado was
20 the first state to use it. And essentially,
21 what it does is it calculates the dummy order
22 for each parent. We multiply that by a
23 hundred fifty percent to account for both

1 parents having duplicated expenses, such as
2 housing. And then we weigh that by the
3 amount of time, and then we offset it. And
4 it's in our report if you need to look at it
5 again.

6 And another thing I do want to say
7 about time-sharing adjustments is that,
8 should it start that low. I mean, should it
9 start at four days? You know, there is some
10 argument of truth that there is food costs
11 there, but you can also take the perspective
12 of, when are the custodial parent's costs
13 reduced. I wish I had a definitive answer,
14 but I don't. But I really strongly encourage
15 a formula.

16 On F. -- what issue am I on? F., other
17 issues. Subsequently-born children, PSI has
18 a whole section in our report about this
19 issue. And we recommended expanding the
20 adjustment for subsequently-born children to
21 include children that were born in any order,
22 any additional dependent. And we recommend
23 weighing that amount by seventy-five percent,

1 and the reason we do that is it equalizes
2 support between the two sets of children.
3 Again, that has the effect of decreasing
4 order amounts. As you notice, almost
5 everything on this table has the effect of
6 decreasing order amounts.

7 The next issue, F.3, child care, which
8 is actually the child care tax credit. I
9 want to thank you, Mr. Rogers, for paying me
10 such a high compliment on the thing that I
11 developed for North Carolina. And we agree
12 that the child care tax credit should be
13 considered in child care costs, but we also
14 want to recognize that some families don't
15 have income sufficient to have a tax credit.
16 Again, sixteen thousand. Remember that
17 number. I'm going to quiz you on it.

18 So in the last point is that
19 extraordinary medical expenses. And this is
20 the only thing on this table where we agree
21 it increases order amounts. The only other
22 thing that might increase order amounts is
23 the schedule. But by going to two fifty per

1 year per child, including that as ordinary
2 medical expenses, which is the average
3 out-of-pocket medical expenses based on the
4 national medical expenditure survey that is
5 spent on a child, it will increase orders.

6 So are there questions or --

7 MS. PALMER: Julie Palmer. During
8 lunch, we had some good discussions. And if
9 the current guidelines are from 1987 and now
10 we're looking at this and we're looking at
11 decreasing, what -- and the cost of living
12 has decreased since 1987, how can these these
13 numbers go down? Gas has not gone down.
14 Housing has not gone down. Utilities have
15 not gone down. Groceries have not gone down
16 since 1987. So that's the thing. You know,
17 if these are from 1987 and we used statistics
18 from '72 and '73, these numbers should be
19 going up, not down anywhere.

20 DR. VENOHR: Yeah. And the numbers in
21 the PSI report do go up except for at the
22 highers amounts for two -- it graduates for a
23 higher number of children, and there is a

1 couple of things that contribute to that.
2 And, one, as Mr. Rogers pointed out, we
3 switched from the Engel methodology to the
4 Rothbarth methodology. It wasn't us that
5 actually did it. It was Ohio.

6 Let me tell you a little bit about the
7 history. I'll try to make it quick. In
8 1990, the Federal Department of Health and
9 Human Services commissioned Dr. Betson at
10 Notre Dame -- we had nothing to do with it --
11 to estimate child-rearing costs using five
12 different methodologies. So he used the
13 Engel methodology, which is the food shares
14 that Espenshade used -- and that's the basis
15 of the Alabama schedule -- used the
16 Rothbarth, used the per capita, used two
17 other methodologies which just blew up. And
18 Betson concluded that the Rothbarth
19 methodology was the most sound.

20 And the Lewin Group, which you have a
21 copy of that report, they reviewed Betson's
22 study. Lewin had nothing to do with us. And
23 they concluded that the Rothbarth estimator

1 understates child-rearing costs, and the
2 Engel estimator overstates. So Ohio was the
3 first state to really look at this, and they
4 contracted with us. We developed a schedule
5 based on the Rothbarth Method and the Engel
6 Method.

7 And the Engel Method, it was price
8 sticker shock. It was so much higher than
9 Espenshade's estimate, and Betson could not
10 -- and Espenshade and Lewin, they all talked
11 about, why is Betson's estimates based on
12 Engel so much higher than Espenshade's. And
13 they weren't sure if it was the data because
14 there is new -- the Consumer Expenditure
15 Survey, they made a lot of changes in the
16 '80's. And now it's much better, the data.
17 And Espenshade, which forms the basis of the
18 Alabama schedule, that's '72-73 data. So
19 they weren't sure if it was a problem with
20 the data, if Betson and Espenshade used a
21 slightly different approach on the
22 specifications of the Engel methodology.

23 But because of that, states started to

1 go with the Rothbarth. And when we were
2 trying to keep costs down for a state, we
3 would just use the Rothbarth, but I do have
4 an Engel schedule if you guys want one. I
5 did prepare one I remember last time. I can
6 give it to you because I do have the Engel
7 estimates. So you actually can have both.
8 You know, I just didn't want to overwhelm you
9 in that report. But mostly, it was that
10 change in methodology.

11 And the other thing we changed, which
12 I'm very pleased that you adopted, is the
13 National Academy of Science, using them to be
14 the multiplier for four, five, six, seven
15 children. The estimates -- the data set only
16 has sufficient sample size for one, two,
17 three children. There is not a lot of
18 families with four or more children. So we
19 use an equivalent scale developed by the
20 National Academy of Science to adjust for
21 higher amounts of children, and that amount
22 is slightly different than what was used back
23 before. And so it's really those two

1 factors.

2 And, like I say, I'll be honest with
3 you. If I had it to do all over again, I
4 would give you an Income Shares model, but I
5 would use the data up to 2004. And it would
6 be higher. I'm not going to kid you. I
7 would even recommend going higher than what's
8 in our report right now. And it would be
9 higher for two, three, four, five, six
10 children, and it's going to be higher at
11 higher incomes. Now, the amounts at one
12 child are going to be a little less if you
13 did them, but that's what I would recommend.

14 MS. DAVIS: What percentage higher is
15 the 2004?

16 DR. VENOHR: I don't know. I can give
17 you what we did for Oregon, but it's not
18 realigned for Alabama's low income. But I'll
19 be more than happy to send the reports to
20 Mr. Maddox. I've got to check with Oregon to
21 make sure it's for dissemination, but I want
22 to give kudos to the State of Oregon for
23 funding this. And they told us as a

1 condition of funding, they wanted us to share
2 it with other states.

3 MS. DAVIS: It would be the most up-to-
4 date information?

5 DR. VENOHR: Yeah. They told us that
6 they'd be more than willing to share it with
7 other states, but we could charge if some
8 state wanted us to, you know, develop a
9 schedule for them. But you can --

10 MS. DAVIS: You did Oregon for free.

11 DR. VENOHR: We did it for fifty
12 thousand.

13 MS. DAVIS: But Oregon said you could
14 share it with us for free, so we could at
15 least get that.

16 DR. VENOHR: Yes, exactly. Then you
17 could see what the difference is. Did I
18 answer your question? I've been getting
19 sidetracked lately. Any other questions?

20 DR. PATTERSON: I do. This is
21 probably not -- it's one of the other
22 issues. The subsequently-born children, how
23 does that work?

1 DR. VENOHR: Oh, subsequently born?

2 DR. PATTERSON: Yes. I'm not sure I
3 understand that.

4 DR. VENOHR: You know, people use
5 different terms for it. But it's, you
6 know -- let's say the nonresidential parent
7 has another set of children or it could be
8 the custodial parent has another set of
9 children. It's more easy to see in a
10 modification. You know, let's say that both
11 parents got remarried. Then you could
12 take -- you do a dummy order for their new
13 children, their additional children. So you
14 use the schedule to create a dummy order, and
15 you subtract that from the parent's income.

16 DR. PATTERSON: As if there was another
17 award for those children?

18 DR. VENOHR: Yes. So you subtract it
19 from the parent's income before you calculate
20 support for the children at the bar. And the
21 way that the language is -- and correct me if
22 I'm wrong because I didn't read the statutes
23 very clearly last night when I was coming

1 in -- is that Alabama provides that that can
2 be a deviation factor.

3 JUDGE HUGHES: It's a deviation. It's
4 not put into the calculation.

5 DR. VENOH: A lot of states have it in
6 the calculation, and a lot of states apply it
7 to not just subsequent-born children. So
8 let's say that there was a child born out of
9 wedlock. Okay. So let's say that the -- oh,
10 my husband will never forgive me for saying
11 this. Let's say my husband, Steve, has an
12 affair. Don't report this back to him. It's
13 easier to use real names. And he has this
14 child out of wedlock. Then if they were
15 computing support for Steve's child, they
16 would take in consideration our children. So
17 it doesn't -- that sequence of birth has no
18 effect on it because our children -- well,
19 let's say we get divorced actually. We get
20 divorced because of this affair, of course.
21 And so these children -- this out-of-wedlock
22 child was born after. So now we'd have to
23 decide what I'm going to get in child support

1 because I'm going to get custody. No, he'd
2 probably get custody. But anyway, so they
3 would calculate the out-of-wedlock birth and
4 subtract it out. And by taking seventy-five
5 percent, it makes it more equal between the
6 subsequent children. Did I answer that.

7 DR. PATTERSON: I think so.

8 DR. VENOHR: Any other questions?

9 JUDGE HUGHES: Can you hold on just a
10 minute? Mark, you wanted to respond. Then
11 let me see if we've got any questions for
12 either of you.

13 DR. VENOHR: We'll switch seats.

14 MR. ROGERS: I like standing. I 'll be
15 driving back to suburban Atlanta later.

16 Hopefully we're getting closer to the
17 truth with the debate, and I just have a few
18 comments. Sixteen thousand dollars. I guess
19 I will never forget that number, but it is an
20 important number to remember. And Jane made
21 one key point to go along with that. And
22 that is, most of the noncustodial parents
23 associated with those that are fifty percent

1 below sixteen thousand below income, also.

2 DR. VENOHR: Whoa, whoa, whoa. That's
3 not true. I'm sorry. That's not true. A
4 lot of them are. But remember that the
5 median income for single-parent male head of
6 households is thirty thousand. So, yes,
7 there is a high proportion that are low
8 income, but it's not as high as the
9 proportion of females.

10 MR. ROGERS: I think they are two
11 separate issues. Male single-parent heads of
12 household single-parent families have higher
13 incomes on average than the females in the
14 same situation. That's separate from the
15 female single-parent head of households who
16 have the father of their children, what the
17 father's income is. Many of those have low
18 incomes.

19 DR. VENOHR: Many have low incomes, but
20 not a higher percentage. And I can
21 substantiate that from all --

22 MR. ROGERS: But one of the points is
23 dealing with -- in a number of states. This

1 issue has come up in discussions with people
2 I know in Montana. They have what they call
3 a bimodal income distribution, lots of low
4 income cowboys and some wealthy folks, too.
5 And there's some of that in Alabama where
6 there are a good number of low income
7 situations. And we need to take into account
8 the fact that self-support needs to be
9 especially addressed. It sort of begs the
10 question that there are a lot of low income
11 families, what's wrong with using single-
12 parent data which include low income
13 families. But separate from that, the Cost
14 Shares tables do have higher incomes, and the
15 Income Shares adjusted for second households
16 clearly has low, middle, and high incomes.
17 So that's really not an issue.

18 On the child-related tax credits, the
19 earned income tax credit is not dependent
20 upon owing tax. That's something that a low
21 income custodial parent can receive even if
22 no taxes are owed. So that is an income
23 tax -- child tax credit that I think should

1 be recognized. Now, is it means tested? You
2 might consider it that way. But clearly even
3 at the low income level, the exemption should
4 at least be shared either because it's not
5 worth anything to the custodial parent, which
6 often is the case, then the noncustodial
7 parent should be entitled to use the
8 exemption, especially if it has no value to
9 the custodial parent.

10 DR. VENOHHR: Wait a minute, Mark. Only
11 the custodial parent would be eligible for
12 the EITC --

13 MR. ROGERS: That's true. I switched
14 topics.

15 DR. VENOHHR: Yes. You usually don't
16 get the EITC and the child tax credit on top
17 of each other.

18 MR. ROGERS: It depends on the income
19 situation. But clearly the dependency
20 exemption can be shared with the noncustodial
21 parents.

22 DR. VENOHHR: Right. Correct. But the
23 EITC can't.

1 MR. ROGERS: The EITC cannot be shared
2 other than if you made a calculation as an
3 offset, and that's not what I'm discussing.
4 At a minimum, if you look at the net income
5 that is not taken into account in the basic
6 child support obligation table, the sharing
7 of the exemption does not go beyond what is
8 not taken into account in the cost table. So
9 it's clearly appropriate to presumptively
10 share the exemptions. That's not going into
11 the earned income tax credit, just the
12 exemption which the child tax credit is
13 associated. And that's what's done in
14 Arizona and in Colorado, and that's a very
15 reasonable way of sharing the cost offset.

16 Now, I appreciate the comment that
17 Georgia did not adopt Cost Shares. There is
18 more than one reason for that. Georgia, as
19 well as Minnesota, are basically in sticker
20 shock from so many years using percent-of-
21 obligor-only guidelines. In fact, in
22 Georgia, it was fixed gross income. And
23 there was such sticker shock in terms of the

1 inequity that two judges in Georgia declared
2 Georgia's guidelines unconstitutional. That
3 was reversed. But the point was, they were
4 viewed by at least some judges to be so
5 excessive that they were found temporarily
6 unconstitutional.

7 My point being, Georgia is really going
8 through a lot of sticker shock going from,
9 Gee, we've overcharged obligors for so many
10 years, it's hard to bring it down to
11 reality. Now, what that means is, it leaves
12 something in between, and Georgia has gone
13 with Income Shares. And I'm not surprised
14 because it's still huge sticker shock to
15 Georgia right now.

16 And if that's a criteria for which
17 guideline you pick, I guess that leaves out
18 Rothbarth because Rothbarth is developed by
19 David Betson of Notre Dame in Indiana.
20 Indiana does not use Rothbarth. And that
21 doesn't mean that it's not valid to be
22 considered, but I think it holds true,
23 profits cannot be local or experts always

1 come from afar.

2 DR. VENOHR: Whoa, whoa, whoa. I'm
3 sorry, but Betson is on the commission for --

4 MR. ROGERS: But Rothbarth --

5 DR. VENOHR: That is not the reason
6 they don't use Rothbarth.

7 MR. ROGERS: But Indiana does not use
8 Rothbarth.

9 DR. VENOHR: No, they don't, but it has
10 nothing to do with what you're reporting.

11 MR. ROGERS: All right. But anyway, I
12 think there is the issue of whether the cost
13 schedule should be readjusted for Alabama's
14 relatively low income. The difference is
15 narrowed somewhat. This is not so great.
16 But whether you go with a standard Income
17 Shares or Cost Shares, there should be
18 consideration for the second-household
19 adjustment. That takes into account
20 available income, whether it's standard
21 Income Shares or adjusted for relative
22 income. And I would argue, if you want to go
23 with standard Income Shares, then there

1 should be a second-household adjustment.

2 MS. DAVIS: Did your second-household
3 adjustment, did it include principal, as you
4 indicated?

5 MR. ROGERS: That needs some further
6 research. That's a good issue to look into.
7 If it does include principal, it's probably a
8 very small amount and could be readjusted.

9 MS. DAVIS: You don't know if your
10 figures do include principal?

11 MR. ROGERS: I do not have that much
12 detail from the IRS. It may or may not. But
13 in terms of the total cost of housing,
14 including utilities, payment on principal is
15 going to be a very small part of it. But
16 that is something that can be looked into.
17 I'm going to end with -- and on the last two
18 pages of the Lewin report that Ms. Venohr
19 provided --

20 DR. VENOHR: Dr. Venohr.

21 MR. ROGERS: Dr. Venohr.

22 DR. VENOHR: Thank you.

23 MR. ROGERS: The last bullet states

1 that one of the recommendations is,
2 Developing new approaches to estimating
3 expenditures on children including the
4 possibility of directly estimating these
5 expenditures by asking families how much they
6 spend on their children. It's basically the
7 Cost Shares approach. Then on the last page
8 in the conclusions of the Lewin report, it
9 states, The recurring theme throughout this
10 report is that because of lost household
11 economies or economies of scale, a reduction
12 in the standard of living of at least one
13 household is inevitable when the parents of
14 children do not live together. The central
15 issue that must be confronted in determining
16 whether or not existing child support
17 guidelines are appropriate is whether or not
18 the guidelines distribute this reduction in
19 living standards fairly between the custodial
20 and noncustodial households. The estimates
21 of how much parents spend on behalf of their
22 children, in both intact and single-parent
23 families, can help to inform this decision.

1 So even the Lewin report focuses on the
2 consideration of a Cost Shares type of
3 approach and the importance of considering
4 single-parent income.

5 And I would like to end with, your
6 final consideration should view the
7 guidelines as a legal presumption focusing on
8 needs and ability to pay. And if you want
9 guidelines to be based on ability to pay,
10 it's going to at least require Income Shares
11 adjusted for a second household set of
12 expenses. Thank you very much.

13 MS. DAVIS: Could I ask you a question?

14 MR. ROGERS: Yes. And maybe this is
15 when Jane answers at the same time.

16 MS. DAVIS: My question relates to her
17 comment about the experience, I think, of
18 Oregon that they were having. And I don't
19 remember if it was Gordon or somebody, maybe
20 Steve, said earlier that if you build in a
21 presumption that -- and you're figuring
22 twenty-five percent of the parenting time
23 equates to twenty-five percent reduction in

1 the cost related to the child, child care
2 cost, and then these people don't actually
3 follow up and have that child in their home
4 for that twenty-five percent of the -- in the
5 formula that you suggested here, how would
6 you resolve the -- practically, how would you
7 resolve some kind of adjustments, short of
8 having to go back to court and having the
9 people calculate how many days of extra
10 visiting subsequent to that child support
11 guidelines used to calculate twenty-five
12 percent?

13 MR. ROGERS: Well, I think we touched
14 on some partial answers to that, and bottom
15 line, there is no easy answer. There's a lot
16 of gaming that could occur by either parent,
17 custodial or noncustodial. There are issues
18 of equity whether you do or don't. If you do
19 have a parenting-time adjustment built in,
20 there's the issue of follow through. If you
21 don't have them built in, there is the issue
22 of one parent paying twice. There is some
23 in-between solutions I think, such as going

1 with Arizona but with a higher -- slightly
2 higher threshold, thirty, forty overnights
3 and then per diem. It's probably an entirely
4 separate discussion of why I think there are
5 problems with cross crediting for the
6 parenting-time adjustment, especially of a
7 high threshold. But an in-between solution
8 is to have a moderate threshold where the
9 noncustodial parent does begin to get some
10 consideration early on. Thirty, forty,
11 overnights for a threshold. That could be
12 said to be, All right, if visitation is
13 missed on occasion, well, that was built in.
14 Now, that doesn't help the noncustodial
15 parent who actually exercises all of his or
16 her visitation, but it's a middle ground.

17 MS. DAVIS: It could work either way.

18 MR. ROGERS: It could work either way.
19 And then part of the legislation considered
20 in Georgia was to impose contempt penalties
21 on either parent for not exercising parenting
22 time, including the custodial parent that
23 might dump the children on the noncustodial

1 parent a lot.

2 MS. DAVIS: But from an economic
3 standpoint, other than threatening to put
4 them in jail --

5 MR. ROGERS: The middle ground is to
6 have a moderate threshold and then have per
7 diem crediting after that.

8 DR. VENOHR: It's very hard for me.
9 I'm used to being the teacher so for me to
10 raise my hand is kind of funny. But in any
11 event, what I wanted to say is that
12 Arizona -- Oregon, they did exactly that.
13 They took Arizona. And they started at
14 twenty percent time sharing, and it's still
15 not working.

16 MR. ROGERS: But did they have a slow
17 start or did it --

18 DR. VENOHR: It was ten percent --

19 MR. ROGERS: I think if they started
20 with a lower credit --

21 DR. VENOHR: You know, the only problem
22 you have with that is then it gets more
23 precipitous. Actually, my favorite formula

1 that I've ever seen, but it has never passed,
2 was the Michigan formula. And if you look at
3 it, it's like a cross credit, but they square
4 it.

5 MR. ROGERS: You just like that it's a
6 fancy cubed formula.

7 DR. VENOHR: What can I say? I got my
8 Ph.D. because I'm great at calculus. But in
9 any event, what they tried to do was do a
10 formula where it's cubed, and it ends being
11 this really nice gradation. The best
12 gradation I've ever seen with a decrease
13 that's so gradual. And it wasn't passed
14 because they had their squared formula, which
15 starts at I think it's a hundred twenty-six
16 overnights, and the commission recommended
17 going down to fifty -- I think it's fifty-
18 six, fifty-seven overnights and then doing
19 this cubed thing which would make it more
20 graduated. And then -- this happens so
21 often -- a group of attorneys representing
22 high-end custodial parents fought it. This
23 has happened in Pennsylvania with a different

1 time-sharing formula, Georgia. You know,
2 there's been a lot of fighting from the high
3 end.

4 MS. DAVIS: I guess what I'm trying to
5 figure out from a practical standpoint,
6 obviously, there's a lot of ways you can do
7 something with shared parenting. But once
8 it's put in the formula, what has been
9 y'all's experience in terms of whether the
10 custodial parent or noncustodial parent winds
11 up deviating substantially from the time
12 frame they were allotted or the formula has
13 anticipated they would have that child,
14 whether the custodial parent dumps the child
15 or the noncustodial parent doesn't show up,
16 if you have, say, it's more than a ten
17 percent deviation, do you go in and give some
18 type of credit the next year? Other than
19 contempt, what can you do?

20 DR. VENOHR: That's a good question.
21 New Jersey has a provision that allows them
22 to go back to court. They can expedite the
23 process, and they can sue for their attorney

1 costs for non-visitation. And surprisingly,
2 it's not used that often. So I do -- I guess
3 the reason I'm telling you that story is
4 because there are not a lot of statistics out
5 there, a lot of court statistics, but I know
6 that experience from New Jersey that it's not
7 used. There is a study up in Wisconsin.
8 They adopted a time-sharing adjustment. I
9 think it was two years ago. And they had
10 their university investigate it. I have not
11 read that study. I would be more than happy
12 to send that study on to Mr. Maddox, and I'll
13 review it first to see if it answers your
14 question. But I don't know of any data.

15 I do know data from modifications, and
16 what we find in modifications, in general, is
17 that neither parent pursues them very much.
18 And it's usually because parents don't want
19 to rock the boat on either end. It's like if
20 things are going well, they don't want to
21 pursue it, you know, because they don't want
22 to change the financial amount, the time-
23 sharing amount. And so it's the parents that

1 are highly -- in high conflict that I'm more
2 concerned about. But most of the guidelines
3 adjustments for shared-parenting time base it
4 on, there has to be an order for time sharing
5 or there has to be an agreed-to amount, and
6 it has to be in the parenting plan. So if
7 the parents can agree to an amount, that's a
8 great first step, and you would think that
9 they wouldn't need to modify it. And that's
10 where I think Oregon might be running into
11 problems because they push these parents into
12 these parenting plans, but they don't really
13 help them reconcile and mediate. And that's
14 where I think they might be causing this
15 conflict; whereas, if parents can agree to
16 the parenting time and we can give them a
17 financial credit, I think it's probably not
18 an issue.

19 DR. PATTERSON: Did I understand you to
20 say that it is working in Arizona?

21 DR. VENOHR: It's working in Arizona,
22 but they have much better support for their
23 time-sharing adjustments. You know, they

1 have parenting education and mediation. They
2 have parenting plans that are more rigid, you
3 know. Oregon's is too fluid, I think. But
4 this is a conjecture at this point. This is
5 one of the things I hope to investigate in
6 the next year or so.

7 JUDGE HUGHES: Does the committee have
8 any more questions for Mr. Rogers or
9 Dr. Venohr? We thank y'all both for coming,
10 and I hope you can make your flight.

11 DR. VENOHR: Oh, I have plenty of
12 time. I appreciate it.

13 JUDGE HUGHES: All right. Do we have
14 any other issues that we need to address
15 today, or have y'all absorbed about as much
16 as you can for one period?

17 Your travel vouchers are in the
18 packet. You need to fill out the yellow
19 parts in blue ink. Blue ink only. They
20 won't accept anything else. And just put the
21 mileage in there. You don't have to try to
22 figure up the rate. Just put your mileage in
23 it, and there's a chart in your packet that

1 will give you from your county or your
2 homebase, wherever the county seat is, to
3 Montgomery.

4 MR. BAILEY: Can we waive the per
5 diem?

6 JUDGE HUGHES: You can waive the per
7 diem.

8 (Whereupon, the meeting was
9 adjourned.)

1 STATE OF ALABAMA
2 ADVISORY COMMITTEE ON
3 CHILD SUPPORT GUIDELINES
4 AND ENFORCEMENT
5 MONTGOMERY, ALABAMA
6

7 IN RE: CHILD SUPPORT GUIDELINES
8 COMMITTEE MEETING
9 MARCH 31, 2006
10

11 REPORTER'S CERTIFICATE

12 STATE OF ALABAMA
13 MONTGOMERY COUNTY
14

15 I, Laura A. Head, Court Reporter and
16 Commissioner for the State of Alabama at Large,
17 hereby certify that on Friday, March 31, 2006, I
18 reported the Meeting of the Advisory Committee on
19 Child Support Guidelines and Enforcement, at the
20 Alabama Judicial Building, 300 Dexter Avenue,
21 Montgomery, Alabama, and that the pages are
22 numbered serially, 4 through 188, and contain a
23 true and accurate transcription of said meeting,
ending with the page number appearing at the top

1 of this Certificate.

2 This 23rd day of April, 2006.

3
4
5
6
7 Laura A. Head
8 LAURA A. HEAD, Court Reporter
9 Commissioner for the
10 State of Alabama at Large

11 MY COMMISSION EXPIRES: 2/6/08
12
13
14
15
16
17
18
19
20
21
22
23